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# REPLY

TO THE

## "REPORT OF THE COMMISSIONERS OF INQUIRY AT THE CAPE OF GOOD HOPE, UPON THE COMPLAINTS ADDRESSED TO THE COLONIAL GOVERNMENT AND TO THE EARL BATHURST BY MR. BISHOP BURNETT."

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"——————— Whose tongue soe'er speaks false,
Not truly speaks; who speaks not truly, lies."

SHAKSPEARE.

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# PREFACE.

THERE is, to the generality of the world, something so imposing and oracular in the Report of "one in authority;" it is so incased in the awful panoply which custom has allowed to envelop power, and so much temerity is attributed to the man who ventures to question its infallibility, that it requires no small degree of nerve to execute the task I have pledged myself to perform: but actuated, as I am, by honest motives; untainted by any of that malignity so lavishly ascribed to me by the commissioners, and justified by self-defence, I enter upon it without the slightest apprehension, and the most perfect indifference to the result.

It may not be unadvisable, before proceeding to a refutation of this Report, to call the attention of the reader to the nature and general object of a Commission of Inquiry; because, by exhibiting these in their true light, a juster estimation will be formed of the real value of its proceedings; and in proportion to the integrity of its construction, will be the success or failure of the party impugning them. A Commission of Colonial Inquiry is the last resort of Government to elude investigation into the proclaimed abuses of a province, and the mal-administration of its Governor. When the cries of the oppressed and persecuted have at length reached Parliament, and redress is demanded with a voice too earnest to be slighted with impunity, the Colonial Secretary instantly lulls the storm with this effectual damper upon research: "Ministers are about sending out a commission of inquiry." It necessarily becomes invidious to urge the subject farther; this deprecation is irresistible; and adieu to investigation for a period of time, regulated, no doubt, in strict conformity to the magnitude and character of the matters to be examined; while the event, in ninety-nine cases out of a hundred, has proved, that the report of the commission instituted has been precisely accordant with the predictions and the desires of the ministry. But what is this commission in essence? A sop to Cerberus, and nothing more. By whom are the commissioners appointed? By the Crown. Who investigates and reports upon the issue of their inquiries? A committee of the House of Commons. Now, what would the country think if that committee was appointed by the Crown also; or, in other words, if it

was entirely constructed of members from the ministerial benches, could it possibly anticipate any result but one in unison with the wishes of Government? If, then, it would be considered preposterous to attempt the organization of such a committee, does it become less so to confide the more momentous part of the scrutiny to persons exclusively nominated and paid by that Government? And yet this monstrous anomaly has been a current practice, without reprobation or comment, up to the present hour. That men of sense should be deluded by so palpable a juggle, and repose that faith in the hired servants of a Government which they deny to the Government itself, is scarcely credible; nor can it be accounted for but in the presumption that few, when the result of the inquiry is published, have any surviving interest in its details. Time is no object with the commissioners; on the contrary, they amass fortunes by protraction. Their salaries and appointments are profusely, I may add, suspiciously, liberal. Years glide away; all the anxieties of patriotism abate with their lapse; new objects of interest are in agitation; the subject of inquiry is half in oblivion; and when the long-expected Report of his Majesty's Commissioners is at length brought forth, the greater part of its instigators are dead, or become indifferent. The mere commission itself, operating as a warning to the guilty, has decreased the influx of fresh complaint; and nothing more is heard but a few impotent reproaches from the victims of that persecution its authors were professedly delegated to scrutinize and denounce.

Such, I believe, is a just outline of the origin, progress, and end of commissions of inquiry: and it now remains to show in what degree the mission of Mr. Bigge and Major Colebrooke may be expected to form an exception to the general rule. It is a well known fact, that no instance can be adduced of appointment to the rule of a province bearing any parallel to that of Lord Charles Somerset's to the Cape of Good Hope, with respect to the motives contributing to it; and it is equally notorious, that, but for those motives, his Lordship was about the last man in England whom the ministry would have selected for such a delegation. The character of his education and feelings—the tenor of his pursuits through life—the estimation in which society held him, and certain imperishable reminiscences, all alike contributed to mark him out as a very unfit governor of a distant and recently conquered province. What, then, overcame so many obstacles to his appointment? What but Parliamentary influence;—and those who are at all acquainted

with its omnipotency will readily concede that the same power which made him Governor at the Cape, would not be unsparing in its exertions to keep him so. As to the extent of that influence in this country I shall say little, for it is too universally known; but at the Cape its operation has been to paralyze every energy of the colonists, and place Lord Charles Somerset infinitely above the laws he was sent to administer. The "Beaufort interest" has ever been the watch-word of his party; and however flagrant his public injustice, or his private derelictions, this trite sentence has ever been found efficient in deterring the aggrieved from a manly expression of their wrongs. Manifold as the complaints are which have reached this country against the administration of this Governor, they bear no proportion to those stifled or suppressed by this magic "Beaufort interest." If, therefore, the Government is compelled to uphold Lord Charles Somerset against its better judgment, which it manifestly is, how obvious is the deduction, that a compulsory investigation of his conduct would only be intrusted to those in whom reliance could be safely placed to report, as preconcerted by their employers.

How far these commissioners have manifested their obedience, if so instructed, or an inclination to shield Lord Charles Somerset, if left to their own discretion, will be seen, by the circumstantial proofs I shall now adduce; and all I ask is, that the country's dependence on the matter of any Report from these gentlemen, may be strictly proportioned to whatever inference it may draw from the facts disclosed.

The announcement of their mission by the Colonial Department excited a strong sensation throughout the colony; the Cape government at that time was so tyrannous and overbearing, and the Governor manifested so decided a determination to put down all opposition to his measures by the strong arm of power, that its appointment was hailed by one and all with expressions of unmingled delight. On reaching the colony, they found popularity and confidence awaiting them, and a prevailing disposition in its inhabitants to further the object of their calling. Very early in the pursuit of their inquiry, a circumstance occurred which contributed to increase the public confidence. A poor black hair-dresser took the opportunity of his daily attendance on Mr. Bigge to complain of being surcharged for his opgaaf: on inquiry, it turned out that his receipts were for treble the amount entered in the burgher senate's accounts, and this led to the discovery of peculation in that de-

partment to the extent of many hundred thousand dollars. This story gave rise to many anecdotes of Mr. Bigge's integrity and independence of character; and his conduct, with respect to Governor Macquarrie, at New South Wales, was fresh in the public recollection. (It was not then considered that Governor Macquarrie was not under the protection of the "Beaufort interest.") But whatever hopes were entertained by the colonists of the commissioners proving impartial, they were doomed to be of very short duration. They had not been a fortnight at Graham's Town before they were altogether dissipated; and no man of the least penetration scrupled confiding to his friend his decided conviction, that the Commissioners of Inquiry were sent to the Cape, not merely from the ordinary motive of creating delay, but with the pre-organized determination of disappointing the wishes of the colonists, and screening Lord Charles Somerset from the consequences of his mal-administration. I have no scruple whatever in making this declaration; some integrity is still extant; and although such is the state of mental thraldom at the Cape, that these gentlemen might probably succeed in getting signatures to an attestation at direct variance with the conscience—for the settlers are "easy gloves" on these occasions—I can abundantly prove what I have advanced, both as to the sentiment and fact.

At my first interview with Major Colebrooke at Uitenhage, whither I rode 100 miles to meet him, I was considerably surprised at his manifest reluctance to hear complaints against Lord Charles, and the zeal with which he projected arguments in his defence. It might have been thought, that as all information from individuals would be necessarily subject to analysis, the commissioners would have the best means of forming an accurate judgment in the plenitude of their materials on which to found it, and that hence they would encourage the utmost latitude of communication: for whatever determinations ministers might have formed with respect to the Governor, and how much it would be expedient to give the public of the actual merits of his administration, I have uniformly felt convinced, that Earl Bathurst's *arrangement* with the commissioners was to conceal nothing from *him*; and that their *private* Report is consequently in full condemnation of Lord Charles Somerset's measures throughout the whole period of his government.

It must be universally conceded, that the conduct of no delegation under the Crown requires more caution than that of a Commission of Inquiry; and especially where motives are supposed to

be in operation, influencing the judgment to a bias. The actions and demeanour of the commissioners should invariably betoken neutrality, and the strictest impartiality in the pursuit of their inquiries. Have the Cape commissioners manifested these qualities? Assuredly not: but, on the contrary, their whole conduct in that colony has so evidently betrayed an inclination to screen his Lordship, that it could proceed from no other motive than a desire on their part, by a display of open partiality, to intimidate and repel the approach of evidence calculated to establish his malversation. The ostensible duty of such an appointment is to preserve secrecy as to its operations,—to receive all manner of intelligence, but to impart none,—to inspire confidence in its integrity,—and, above all, especially to abstain from intimacy or association with any of the parties involved in the scrutiny. The conduct of the Cape commissioners has been in diametric opposition to all these essentials; so far from maintaining secrecy, they have promoted publicity by imparting their own opinions to the examined; these have been communicated again, necessarily exciting a curiosity to ascertain the merits of a testimony to which they were consecutive; and hence his Lordship has been enabled to take a daily succession of hints, and supply a mass of frittering explanations against charges, on which two opinions could not otherwise have existed. On witnesses submitting evidence to the prejudice of his Lordship or his government, they have in some cases directly impeached their motives, using recriminatory language, and imputing constructions foreign to the intention, though lamentably deducible from the testimony. In other instances, they have actually rated parties approaching them with complaints; and their whole bearing in the colony has been a tacit avowal to its inhabitants, that the paramount object of their mission is, in his Excellency's vocabulary, to "walk him over the course."

I profess to be actuated by no greater share of probity than my neighbours, although my calumniators are in the daily commission of actions at which my principles revolt; but I think, if I was a Commissioner of Inquiry into the conduct of a Governor charged with gross and fatal delinquencies, I should consider every *secret interview* I had with him would be, in the public estimation, an impeachment of my integrity; and every glass of his claret that passed my lips a retaining fee for its prostitution; and yet who have relaxed from the toils of business more frequently, or with more real delectation, than the Commissioners of Inquiry at the

table of Lord Charles Somerset? But there is one feature in their proceedings which puts the matter far beyond suspicion, and must convince the most prejudiced mind, that an *impartial* inquiry into the merits of the Governor's conduct at the Cape of Good Hope never has been the object of their mission.

Mr. d'Escury, the inspector of government lands at the Cape, and a gentleman distinguished for talents and integrity, had occasion, in the discharge of his public duty, to suggest to Earl Bathurst the expediency of establishing some efficient control over the grants of Crown lands. In illustrating his subject, he pointed out the awkward coincidence of several of the grantees becoming purchasers of his Excellency's horses, at enormous and hitherto unheard-of prices, as "a circumstance much to be regretted, since it afforded matter for observations detracting from that respect which every loyal and well-meaning subject would wish to see extended to *his Majesty's representative*." Lord Bathurst, jealous of the honour of his friend, thought proper to assume from this declaration, that Mr. d'Escury had "impeached Lord Charles Somerset," and wrote to this effect to the Commissioners of Inquiry. A solemn investigation of his Excellency's horse transactions was forthwith commenced; it is said at the penalty to Mr. d'Escury of dismissal from his situation, if *he* failed in establishing accusations, thus constructed by Earl Bathurst. Mr. d'Escury, with great firmness, and a display of talent fully equal to the occasion, protested against this course of proceeding, and disclaimed the imputation of being his Excellency's accuser; and the commissioners, foiled in this respect, commenced the investigation. As, however, it was professedly undertaken at Mr. d'Escury's instance,—although his allusion to the horse transactions was a distinct communication to Earl Bathurst from that in which he pointed out what, in his official capacity, he considered improvident grants of land,—he felt naturally desirous to be present at the examinations; and, upon every principle of equity, he should have been. If the object of the commissioners was to come at the truth, Mr. d'Escury was, of all men in the colony, the best qualified to put them in the way of obtaining it; but what did the commissioners? They excluded Mr. d'Escury, who had a *legal* and equitable title to be present, but suffered Mr. Whitefoord, *his Excellency's aid-de-camp*, to sit at their table during the whole of the inquisition! thus giving his Excellency not merely the advantage to which Mr. d'Escury was exclusively entitled, but the opportunity of ascertaining the precise

nature of the evidence against him, that he might adopt such measures as his apprehensions suggested, and his immense power gave him the means of practising.

A step so decisive of the true spirit of this commission had all the effect its conductors could have desired: not one man in twenty, replenished with information condemnatory of Lord Charles Somerset's government, had the hardihood to embrace the certain ruin which awaited him, if he appeared an accuser of his Lordship. The whole public became alarmed, every mind was hermetically sealed, and it was soon found that, however ardent the commissioners were in their search of abuses *unconnected* with his Lordship, his Majesty's writ of privy seal inviting, nay, commanding the subject to further the *ostensible* object of the inquiry, was a juggle, a delusion, and a snare, as referable to the development of any delinquencies, however monstrous, if they inculpated the Governor. What I have stated are *facts*, which I will defy the commissioners, or the colonial secretaries, to controvert; I write advisedly, for I am in possession of abundant proofs, and they will speedily be laid before the public, with a complete detail of Lord Charles Somerset's malversations at the Cape.

But, perhaps, a more conclusive proof of this disposition in the commissioners is to be found in their conduct to Colonel Bird, at the outset of the inquiry. This gentleman, after thirty years indefatigable service, found himself unavoidably at issue with his Excellency, and was *in consequence* dismissed from his situation of Colonial Secretary. Prior, however, to this event, the commissioners arrived, and one of their earliest acts was to intimate to Colonel Bird, that whatever information they might require connected with the colonial government, *they deemed it proper only to receive through the hands of Lord Charles Somerset!!!* This is absolutely terrible! it presents an appalling picture of state-trick and delusion, enough to scare honour and honesty from the combat; for how hopeless must be the struggle against power, when we find the very fountain-stream of justice polluted at the spring! Here is the frightful picture of a colony, farmed out to a branch of the aristocracy, groaning beneath the weight of his tyranny and malversation, till its cries ring throughout the world, and render the application of some remedy imperative upon the mother Government. Two men are delegated to institute a solemn inquiry into its abuses, and their first act, from motives too palpable to admit of disguise or extenuation, is to VIOLATE THEIR OWN INSTRUCTIONS! for the writ of privy seal distinctly says, "And we do hereby re-

quire our Governor for the time being of our said possessions at the Cape of Good Hope, and all and every our officers and ministers within our said possessions, and the dependencies thereof, to be aiding and assisting to you and each of you in the due execution of this our commission." Now, who throughout the whole colony could be so "aiding and assisting in the due execution of this commission" as Colonel Bird, the most important and influential servant of the Government, next to his Excellency himself? and yet the very initiatory act of his Majesty's commissioners, in the "due execution of their commission," is to *seal the lips* of that man from whom they could have derived more just information than from any other quarter in the colony.

Whether the commissioners discerned the latent germs of mischief in this extraordinary exclusion of Colonel Bird's testimony, or whatever motive actuated them, it is not for me to determine; but they soon thought proper to deviate from this course, and did submit some interrogatories to him, the replies to which begat others, and *a most important development* proved the result. Now, what did the commissioners do with this examination? It might be supposed that, in "the due execution of their commission," they dispatched it to Earl Bathurst, as part of their general Report,—*no such thing!* for the first intimation the noble Earl had of Colonel Bird's having been examined, was *from Colonel Bird himself!* When this examination is laid before the public, *which I pledge myself it shall be*, all the riddle will be expounded; and the reluctance of Mr. Wilmot Horton to allow Colonel Bird's approach to the bar of the House of Commons, as well as Earl Bathurst's to permit my return to the Cape, will be readily accounted for.

It will now be seen with what justice I have been abused by the servile portion of the public press for impugning the rectitude of the Commissioners of Inquiry; nor is it without gross provocation that I have gone even thus far. These gentlemen, in endeavouring to discharge the *impracticable* task imposed upon them, of saving Lord Charles Somerset, have evinced no delicacy in the adoption of their means. They have sought to sacrifice me to the mighty Beaufort dagon, without scruple or remorse, in a Report upon my case, teeming with distortion and untruth, with no other object than to sink me in public estimation, and paralyze my exertions to bring his Lordship to justice. But they will find themselves deceived; the force of public opinion cannot be resisted; and not till I find that as hostile as his Majesty's Commissioners of Inquiry, will I cease in my endeavours to obtain redress.

# REPLY

## TO THE REPORT, &c.

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"The advocates of Mr. Bishop Burnett are woefully "crest-fallen on the appearance of the Report of the Com- "missioners appointed to investigate the charges advanced "against the Colonial Government of the Cape of Good "Hope. They are struck, as *Hodge* says, all of a heap, and "begin to be ashamed of their *protegé*. Mr. Burnett him- "self, too, for a man of such metal, is wonderfully down "at the mouth, and grows quite pallid at the sudden influx "of light upon his works. Instead of answering in time, he "calls for time to answer. And no doubt he will answer; "and like the country schoolmaster,

'Even though vanquished he can argue still.'

"Aye, we are prepared to wade through a long chapter of "special pleading. We shall gain information on many "points of distinction between Dutch and English law; "but that is all the satisfaction we expect to derive from "the forth-coming defence. Our knowledge of facts will "scarcely be improved by the promised detail. *Time to* "*answer at the bar of public opinion!* The thing is absurd: "it is absolutely ludicrous. Before *that* tribunal, an honest "and aggrieved man's reply may be contained in a nutshell. "Let him fasten but *one* false statement on his adversary— "let him show that he has been misrepresented in a *single* "instance—prove to the English people that the scale of "justice has turned but in the estimation of a hair—and his "work is done. Is it so with Mr. Burnett?"—*Morning Post, Aug.* 25, 1826.

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REPORT—Paragraph 1. We have already stated to your Lordship, that we had distinctly apprized Mr. Burnett, in the year 1824, that our inquiries into his grievances would be limited to those that had an apparent or real

connection with the operation of the existing laws and institutions; but that we could not hold out to him any expectation of speedy redress, more especially if we should find that he had neglected or omitted to avail himself of those modes of obtaining it that the laws of the colony afforded.'

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The information communicated to me by the Commissioners will be seen by our correspondence, and this will fully exhibit the means resorted to by the Colonial Department for protracting the investigation of complaints brought before it, and the little solicitude it feels for individual suffering, when its relief clashes, in any shape, with high political considerations.

My first letter to Earl Bathurst was as follows:

My Lord, Graham's Town, July 29, 1822.

After having fruitlessly expended my capital upon a soil yielding no return, and exhausted every resource of industry and application; after having opposed, to two years' incessant persecution of the Colonial Government, unabated fortitude and patience, the period has arrived when human sufferance can extend no farther, and not to claim the protection of your Lordship would be to question both your justice and your humanity.

In the compass of a letter it would be impossible but to give a very brief relation of the grievances which compel me to request the interposition of your Lordship; they are too manifold and accumulating to be repeated in few words, and the proximate causes of my addressing your Lordship on the subject are too pressing to leave time for that complete disclosure which it is my solemn determination to make both to your Lordship and to the Country.

I came a Settler to this colony in the year 1820, with resources commanding a prominent station in the emigration, and sufficient to have ensured success in any other part of the

world. Whatever may be the causes of the general failure in this undertaking, and however inauspiciously providence may have looked upon the efforts of the Colonists; mine is wholly attributable to the injustice and persecution of the Colonial Government. I have been, in every instance, denied the least participation in the support and assistance granted to the other settlers, who, without that assistance, could not possibly have lingered out existence to the present hour; so disastrous has the emigration proved. My first year's exertions were directed, at vast expense, to the cultivation of forage for the cavalry, in whose vicinity I am placed, and this at the instance and strong recommendation of the Governor's son, Captain Somerset; the whole produce, from manifest partiality to the military growers and the most palpable evasion, was suffered to lie upon my hands until entirely destroyed by the regimental horses and cattle; my grass has been constantly cut with impunity by the Commissariat; my firewood consumed, and every article of any value upon my premises appropriated by all the departments of the local Government; every application for redress has been treated with neglect, insolence, or a decided inclination to support these aggressions upon my property; and I can prove, from indisputable testimony, that my losses, from theft and trespass owing to my contiguity with the Cape regiment and barracks, are at least in value between 6000 and 7000 dollars. From an uninterrupted succession of losses and disappointments, owing to continual drought and two entire failures of the crops, unprotected and unassisted as I have exclusively been throughout this arduous struggle, some claims it was impossible to liquidate with promptitude, have been prosecuted against me with the most unsparing rigour of the law. In a remote province, without the means of defence or of acquiring any knowledge of the laws, sentences of condemnation and sequestration have been pronounced against me; expenses multiplied by every legal obliquity; and my grant of land from the Crown made convertible one year before the ordinary period, to render it amenable to sequestration. A spot of waste land, conditionally granted to a servant of the Colonial Government, which I hired on a six years' lease, and on which I have expended above 2000*l.* sterling, has been reclaimed by this favoured individual,

and peremptory orders issued by the Colonial Government for me to quit possession of it after valuation of my improvements. The assessors appointed for this purpose are Dutchmen, the creatures of this man, and personally in hostility against me, their appraisement is, nevertheless, received, and I have been ordered to quit the abode of my own erection in twenty-four hours, in a country presenting no shelter or habitation but to resources, the defeat of every reasonable hope and expectation have placed, quite beyond my reach.

Here, my Lord, I have thought it necessary to make a stand, and defend my possessions against a tyranny so crushing and intolerable: no proceeding but of force shall eject me from the property I have created. A persecution so indefatigable was not without its motive. It originated, my Lord, in my incapacity to forget that I was born and bred a gentleman. In reaching a land rarely frequented by this class, incapable of supporting insult, I resented one as became me early on my arrival, and was compelled to degrade and chastise a military man. The general prediction of my fate from that hour has been verified, I have been marked out for persecution, and no opportunity has been slighted of injuring and annoying me. This fact must be still in the recollection of Sir Rufane Donkin and Mr. Ellis; I appeal for its confirmation to their justice and to their honour.

Pressed upon as I have been by my own afflictions, it is impossible to omit touching upon the sufferings of my brother settlers, their condition would excite in a Government of humanity rather pity than persecution; and yet, in a state actually bordering on starvation, they are pursued to their wretched hovels, with unyielding inflictions of the law, for debts contracted to keep their families from perishing. Many, for months past, have existed upon rice and water, others upon pumpkins, and the most respectable can scarce procure the necessaries of life. Bread, rarely to be obtained in Graham's town at fifteen pence per pound, has been for many months untasted by the bulk of the settlers; the ground, burned by drought, bids defiance to tillage, and the generality of those who had saved a few oxen from their rations, for the plough, have consumed their stock, or sold it for the discharge of debts.

In the midst, my Lord, of all these horrors, the utmost levity and indifference prevails throughout every department of the Government. If they only contemplate any representation to that Government, they are called, 'Radicals,' tauntingly ordered to their locations, and libelled by Proclamations, as unmerited as they are crafty and designing in their object. That object, my Lord, is to urge them, by oppression and persecution, into a thorough disgust with the colony, and to render futile the beneficent intentions of the mother Government. The settlers, my Lord, were not wanted here, so at least says the Colonial Secretary, who, to me personally, not only impugned the wisdom of Government in sending them hither, but who also declared it would have been charity to scuttle the transports then entering the bay. Hence, therefore, the necessity, in justification of the severities enforced, of stigmatizing them as disloyal and refractory, that their native Government may also turn a deaf ear to their complaints. To heighten the general misery, the contrast between their treatment and that experienced by the Dutch is so great, that a traveller would suppose the latter was the conquering and we the conquered people. Grants of land to any extent are given to these foreigners on application; the son of a Boor receives his six thousand acres for asking, while an Englishman cannot obtain a yard beyond the niggardly and inadequate portion originally given.

The military, who can have no pretensions to land, are in no case refused; with the assistance of the troops they build houses for sale, and altogether monopolize the growth of green forage for the Commissariat, the only article of any return worth tillage.

The whole system of Government in this colony is established in the profoundest *espionage*; all its operations are sinister, oblique, and mystical, with the exception of those arbitrary acts, emanating at once from the caprice or partiality of the magistrate. The administration of justice is notoriously a burlesque, and a theme of laughter and ridicule with every person of sense and discernment. The members of the court of justice, on whose fiat hang the liberties and properties of the British subject, are all Dutch, bearing to us English the most inextinguishable hatred. These persons are for the most

part unacquainted with their own laws until appointed to administer them. "Causes are rarely decided upon their merits; but upon the degree, station, or wealth of the parties; and the man who should have the temerity to prosecute a suit against a Colonial Secretary, or any of the innumerable ramifications of his patronage, would, to a moral certainty, incur defeat and ruin.

This sketch of but a small portion of our grievances is only submitted to your Lordship in justification of the request I am under the necessity of making, that your Lordship will be pleased to issue directions to the Colonial Government to furnish a free passage to England for myself, family, and seventeen witnesses. There, if I substantiate the charges I have made, ample justice and redress await me; on the contrary, if I have slandered the Colonial Government, and given a false picture of our condition, I shall be amenable to that punishment my offence would richly merit. But permit me, my Lord, to deprecate any investigation of these charges here; such a proceeding would not only debar me from the justice I implore, but consign me to certain and irremediable destruction.

I have the honour to be,
My Lord,
Your Lordship's very obedient Servant,
B. BURNETT.

To this I received the following reply:

SIR, Downing-street, December 17, 1822.

I AM directed by Earl Bathurst to acknowledge the receipt of the letter which you addressed to his Lordship, under date of the 30th of July last.

Whilst Lord Bathurst regrets the misfortunes which you have enumerated, he cannot perceive that they are in any way attributable to the Colonial Government; on the contrary, they clearly appear to have arisen, in common with those of other settlers, from the general failure of the crops throughout the Colony, an evil which no prudence or foresight of the local Government could contemplate or prevent. On this point, Lord Bathurst directs me further to observe, that however desirable it might be to give assistance in all instances of difficulty, it must necessarily result, from the limited means of the Colony,

that it could only be granted to those few settlers whose absolute and pressing wants demanded and warranted immediate aid. From your statement, it certainly does not appear that you had any claim to be so considered. You proceeded to the Cape with a capital which placed you above the class of common settlers, and, consequently, you could not be admitted to a participation in that pecuniary relief intended only for that description of persons.

On the subject of the special grievances which you represent yourself to have suffered from those entrusted with the local Government, as well as on that of the complaints which you prefer generally against the administration of the laws, Lord Bathurst cannot conceive it to be possible that any individual could have been singled out for persecution, or incessantly harassed as you represent yourself to have been. At all events, it appears from your own statement, that you never made any appeal for redress to that magistracy, or to those authorities, whom you have so intemperately and indiscriminately condemned. Had you adopted this ordinary and natural course of proceeding, Lord Bathurst feels confident that redress would not have been denied to you, if it had appeared that you had experienced any improper treatment; or, even supposing that you had been disappointed, an appeal to his Lordship would have been more proper as an ultimate than as a preliminary measure.

With respect to the destruction of your green forage, by its remaining on your hands, you are aware that the forage for the consumption of the troops is generally obtained through the means of a competition, and that the lowest offer, provided the parties be equally sufficient and responsible, is invariably taken; and, therefore, if your proposals were at an higher rate than other tenders, it would follow, of course, that their offers would be received in preference to yours, and you cannot be considered to suffer any real grievance.

With respect to the trespass and depredations stated to have been committed on your property, by horses and other cattle, Lord Bathurst has directed me to observe, that in a country, no part of which is understood to be inclosed, and where cattle can only be watched by an herdsman, the recurrence of the evil of which you complain, could have been guarded against only

by enforcing, as you had the power of doing, the existing laws of the Colony applicable to this particular casualty.

As to that part of your letter wherein you protest against the partiality shown to the Dutch, in preference to the English settlers, Lord Bathurst cannot imagine that magistrates, who are chiefly English, would indulge in any feelings of partiality, but, on the contrary, that they would promote the interests of all persons, without reference to country, who conducted themselves with propriety and good order.

Under these circumstances, Lord Bathurst deems it altogether unnecessary to sanction the request which you have made, to be allowed to bring over your own family and seventeen witnesses to this country, free of all expense, for the purpose of proving the facts connected with those complaints which you have felt it your duty to press upon his attention; but, even if it were considered necessary that your case should have a particular examination, there could be no necessity for conveying these witnesses to England, as his Majesty's Government are on the point of sending to the Cape Commissioners to whom your Memorial might be referred, if it were deemed to be a special case into which they found that they had authority to inquire. I am, Sir,

Your most obedient humble servant,

B. WILMOT.

Mr. B. Burnett,
Graham's Town, Cape of Good Hope.

A communication so little satisfactory as this, replying to facts with hypotheses, and having scarcely any relevance to the letter it professed to answer, induced me to send the following more explicit detail; and that the reader's attention may not be unnecessarily distracted, I shall at once subjoin the narrative subsequently laid before Earl Bathurst in completion of my history at the Cape.

SIR, Graham's Town, August 12, 1823.

YOUR letter, dated 17th December 1822, in reply to my communication to Earl Bathurst, under date the 30th July, I have duly received. Had I contemplated, when submitting my

grievances to Lord Bathurst, the description of notice they have engaged, I should have entered more into detail. I naturally supposed, that such direct and unequivocal charges against the administration of an important branch of the British executive would have terminated in the result of that inquiry they challenged, rather than in the communication his Lordship has thought proper to make; but impressed with very different feelings since the receipt of your letter, I must be permitted to be more explicit. Did I conceive that Lord Bathurst was sufficiently informed on the state of that settlement, or that accounts simultaneously urged by Lieut.-Colonel Bird, with the strong representations I have been compelled to make, had not a baleful influence upon my prospects in this country, and seemingly upon even the integrity of my statements to his Lordship, I should consider replication a mere waste of words; convinced, however, that his Majesty's Government have no instrumentality in the very extraordinary proceedings in this Colony, and that it is sincerely desirous to promote the prosperity of the colonists, I retain sufficient confidence in its justice to hold myself warranted in making that statement I now lay before his Lordship. On reference to my letter, it must be at once perceived that I have advanced no grievance or untoward casualty of any kind, with the single exception of the blighted wheats, but what I attribute exclusively to the influence of the Colonial Government, manifest or sinister; and when I add, that the solitary exception alluded to, operating deplorably as it does upon the industry and prospects of others, has proved a very trifling impediment in the course of mine,—a deduction so evident from the communication I thought it incumbent on me to lay before his Lordship,—why, may I be permitted to ask, are those evils so exclusively retorted upon the providence of God, when alone attributable to the oppression and persecution of this Government? My letter to Earl Bathurst charged it with having exercised that oppression and persecution. I detailed a long list of grievances, having no relation whatever to seasons or the operations of agriculture; and yet I am answered, that in his Lordship's opinion, they clearly appear to have arisen, in common with those of other settlers, from the general failure of the crops throughout the Colony!

In vindication, therefore, of my own consistency, I am bound to confirm the statement I have made by a separate illustration of every charge; however I may despair of producing conviction in any mind so capable of bias in its conclusions as to attach a long train of vexations exclusively "to the failure of the wheat crops."

Your next paragraph, I must be excused for saying, manifests a total misapprehension of the complaint it professes to answer; or betrays an entire ignorance of the measures pursued by this Government with regard to the settlers. The Colonists, on landing, were repaid one-third of their deposits, the Government reserving the balance to reimburse itself for those charges it voluntarily incurred in affording to the new comers the means of transport to their locations, and that temporary supply of rations their peculiar condition rendered indispensable; but the residue of that pledge was so quickly absorbed by these disbursements (in some instances by waggon-hire alone), and the necessity of further assistance became so manifest before the emigrants could possibly derive resources from their own industry, that the acting governor, from mere motives of humanity, ordered a continuance of these supplies for twelve months longer; at the expiration of which period, their condition appearing rather deteriorated than improved, a still further allowance was extended to them, and even after this a modicum of rice has been issued towards their support; thus continuing their chief maintenance by the Government up to within a very few months of the present time.

When his Lordship is acquainted that this bounty of the Government, so far from having been partially extended, was enjoyed by every individual throughout the emigration but myself; that persons not having brought out parties, but circumstanced precisely like me, and equally without pretension to Lieut.-Colonel Bird's political eligibility, have received it; that it has been alike extended to the gentleman, the artisan, and the common labourer, nay, that emigrants of respectability and distinction in their own country, and magistrates in this, have been in the full receipt of it for persons constituting their parties, whilst those persons have been in my service at high wages, and fed with supplies I had the utmost difficulty to collect at any price; when told that these labourers, while in my employ, derived

the means of intoxication from the very sale of articles supplied them by Government, which I had to purchase for their support, and that my exclusion from the least participation in this assistance has been throughout so personal and so pointed, as to occasion Captain Somerset (our then chief magistrate) reprehension for having granted me one issue of rations; what can be said, Sir, of that paragraph in your letter which purports to reconcile with justice the practice of such crushing, intolerable partiality? My claims too in this respect, if any could be justifiable, were surely as strong as those of Major Pigot, Captain Campbell, or any other person of respectability; why then should I be denied exclusively that assistance deemed indispensable to their success, while they enjoyed advantages beyond those in question, from which I found myself exempted by deference to the advice of Mr. Goulburn, your predecessor?

With regard to the next passage in your letter, in which his Lordship is pleased to distinguish certain of my grievances by the term "special," I must admit the great perplexity I labour under in satisfactorily answering it, not from any fear I feel of establishing my statement, but from the difficulty I shall probably encounter in adopting a language sufficiently apposite and perspicuous to prevent the possibility of being again misunderstood.

That his Lordship "cannot conceive it to be possible that any individual could have been singled out for persecution, or incessantly harassed as I represent myself to have been," I can very well imagine; but this is no confutation of the fact; and I can see no reason why his Lordship should assume conclusions utterly at variance with the premises before him, or charge the just expression of my feelings, so long and so remorsely outraged, with intemperance and indiscrimination.

The administration of the laws is such as I have stated it to be. That I have been oppressed, persecuted, and harassed by the Government, is a fact not only notorious, but a common theme of private discussion. I have not only sought redress at the hands of the magistracy and those authorities delegated to render it, but I have unceasingly urged it by every visible means, not only to them, but to the Governor himself, until fresh persecutions have grown out of my importunity, my patience became exhausted by long suffering, and my pride sub-

jected to the caprice, the contumely, and the insolence of every upstart in office. In what part of my letter his Lordship could find an opposite admission, I cannot discover; on the contrary, the whole tenor of it, I will venture to say, is calculated to make a very different impression; my appeal, therefore, to his Lordship, so far from being a preliminary measure, was one absolutely dictated by my despair of obtaining redress from any subordinate quarter whatever.

Your observations in answer to my complaint of partiality shown in the purchase of green forage by the commissariat, and the ultimate loss I sustained in consequence, have not the most distant reference to the grievance advanced, and are altogether the result of some very erroneous conceptions upon the subject. First, Sir, give me leave to observe, that the forage for the consumption of the troops on this frontier is not, nor ever has been, supplied by tender, but that the grower's produce is taken *professedly* in the rotation of his offer, and the price invariably and arbitrarily fixed by the commissariat.

The Erven in and about Graham's Town are almost solely appropriated by the military, or were originally grants to that body. Many of these gentlemen have succeeded in their applications for Erven when they, and the Government, have known that their regiments were under orders to quit the colony!! Captain Trappes of the 72d has realized a fortune by this description of jobbing; one house alone built by the troops in Graham's Town, which I pledge myself to prove did not cost him five hundred rix-dollars, he sold to the Government for fourteen thousand; two other Erven, in or near the town, have proved equally profitable to him; an Erf at Bathurst has been just as productive; only a few weeks since he disposed of another grant from the Government for nine thousand rix-dollars, and he has various other grants in different parts of the colony. Captain Somerset has sold one Erf for seven thousand dollars, offering for sale, since, a very extensive tract taken from the town liberties, for thirty thousand more: these gentlemen are all farmers, against whom it is folly for a settler to compete; their produce is uniformly preferred to the civilians', and this system has his Excellency's sanction; nay, so unblushing is this preference, that I have had repeated instances stated to me of the foragers being ordered, on the approach of rain, to desist cutting upon a civilian's land,

and repair to the Erf of such or such an officer; but my own particular grievance upon this head affords such abundant confirmation of the facts adduced, that I cannot do better than lay it before his Lordship in detail.

From the profit attending the cultivation of green forage, I was induced to hire a farm in the neighbourhood of Graham's Town. His Excellency Sir R. Donkin ordered me a grant of land, in consequence, immediately adjoining it. Determined, however, not to embark in this undertaking without certainty of finding consumption for my crops, I consulted with Captain Somerset, as commander of the Cape Corps, and received from him the most positive assurances that the troops would consume more forage than I could possibly bring forward. Thus warranted I commenced ploughing, after having to construct every implement of agriculture, from the refusal of the authorities to allow me any issues of these materials from the stores. My crops were considered fine. At the proper stage of growth, I acquainted Captain Somerset that my supply awaited him, and was told that the foragers should commence with me the following day. A week however elapsed without their appearance, and I renewed my application: the following day was again announced, but no foragers came; and in this way three weeks passed on of rapidly-maturing weather. At this juncture, Captain Somerset informed me that he had nothing more to do with forage, the Commissary having resumed to himself the privilege of appointing where it was to be cut; and another fortnight was lost in consequence. At length, six days' supply was taken from my crop, and when my turn again came round, I was again neglected to give the preference, not to a needy subaltern or retired serjeant, to a shopkeeper or mechanic, but to Captain Somerset himself, the commander of the regiment, the chief magistrate of the district, and this too out of turn! After two days' further cutting, my barley was declared to be too ripe, and no more was taken from my farm. Captain Somerset subsequently promised me the assistance of some troopers in reaping it for seed; but unfortunately, while I meditated a fourth application upon the subject, the horses from the barracks made an incursion into the corn, from which no efforts of the soldiery could remove them till every acre was so completely poached and trodden down as to render any attempt at reaping futile and unavailing.

Such, Sir, was the fate of above seven thousand dollars' worth of green forage; and yet upon this head I am told that I cannot be considered to suffer any real grievance.

The tenor of your next paragraph has not the remotest affinity to the complaint it discusses. It points out with precision the evil to which we are exposed, and suggests a remedy, which, it might be presumed, the owner of cattle in this colony would soon become acquainted with; but it indicates no resource should this remedy prove unattainable; it promises no inquiry, with a view that, if substantiated, redress may follow.

That his Lordship may, however, learn the inapplicability of the existing laws, or at least their practice, to the casualty in question, and that I have not failed in my exertions to prevent its recurrence from the outset, I must observe, that it was from long experience of their relaxation or utter inadequacy that I made my complaint, and that my instances of scandalous abuse in the pounding system are too numerous to be detailed in ten times the compass of this communication.

With reference to his Lordship's doubts upon that passage in my letter which imputes to the authorities in this colony an undue partiality to the Dutch, I shall not trespass upon your time with any observations attempting to remove them, both because to me, disgusted as I am, and only anxious to quit such a country, it is a matter of perfect indifference, and that it has acquired too well authenticated a notoriety to leave me any credit at stake by my silence.

Having now, Sir, replied to your letter in terms as concise as the subject would allow, I have to add to the list of grievances already before his Lordship some fresh aggressions on the part of this Government, I will venture to say, unparalleled in the records of persecution, because in inflicting them all the restraints of law and equity have been thrown aside, as if the ordinary modes of crushing an obnoxious individual were too dilatory and insufficient to the impatient despotism of this arbitrary Government.

The first year of my application to the object for which I emigrated was characterised by that extent of enterprise which naturally occasioned the train of disappointments enumerated, to fall upon me with corresponding weight. At this juncture, a claim was enforced against me, in violation of a parole engage-

ment, and carried through all its gradations, without knowledge of its progress on my part, to what the colonial law calls a sentence. Notwithstanding I tendered legitimate assets to discharge it, and that my landed property alone was estimated to be worth six times the amount of any incumbrances upon it; notwithstanding I memorialed the Governor upon the severity of this course, and protested against its illegality, these representations were wholly disregarded, and my name was publicly branded with insolvency. I might well pause here to exclaim at the infamy of such proceedings, even admitting it had been legal, when our claims to the most extended consideration of the Government, on the score of policy as well as humanity, are reflected upon. My property was forthwith advertised for public sale; my labourers, and even household servants, discharged by order of the Landdrost; I was compelled to forego undertaking a very profitable contract; my credit was totally ruined, and my prospects in this colony apparently blasted altogether. In this condition, Sir, have I lingered sixteen months. The sale was as arbitrarily suspended as it was illegally advertised; and in spite of memorials, remonstrances, and the most earnest entreaties, I can neither induce the Government to sell my property and let me quit the colony, or relieve me from those disabilities their slander has entailed; so that I am in the anomalous predicament of possessing property in land alone six times above the amount of my debts, which I am illegally withheld from discharging, and at the same time a proclaimed bankrupt, denied even the rights of insolvency. If this, Sir, is not injustice and oppression, and these of the foulest character, they have no existence upon earth, but are the mere chimera of a morbid imagination.

I am aware that charges of this nature, however solemnly urged, are not entertained upon mere assertion by his Majesty's Government, or I should not find myself under the necessity of repeating these. If this scrupulosity can, however, be at all removed by a statement of facts so corroboratory as to throw light upon and confirm each other, my complaints may probably awaken more attention when I add, that this stab upon my credit has been declared illegal by the Justiciary Commissioners in public court more than nine months since; causes entirely depending upon its legality have been decided in my favour;

and still, so far from obtaining redress, not the first step towards it is conceded—a public repeal of this iniquitous advertisement.

The Government is aware of the dilemma into which it has plunged; but with no means of extrication but what must proclaim its folly as well as its injustice, and with a latent hope that I shall be wearied by its perseverence, it continues to heap wrong upon wrong from want of integrity to redeem its error. What, Sir, would be the feelings of a British merchant, on taking up a newspaper, to find his name, whether from malice or mistake, inserted in the bankrupt list? and what atonement could be made him for the infliction of such an injury? Such a case is, however, but faintly analogous to the one before you. Another instance of flagrant injustice is the refusal of the Government to discharge a claim I have upon it for grass supplied the Cape Cavalry. Captain Somerset took this grass absolutely against my wish, although with a promise that it should be paid for; on applying for the necessary voucher to authorize its payment by the Commissary, he promised, upon his honour, not to leave Graham's Town without giving it: this, and a subsequent pledge to the same tenor, he has infracted, and the claim continues undischarged. By what language such an affair should be characterized before the high functionary to whom it is addressed, I am not statist enough to determine; but the terms, if I may venture to disclose them, in which it is spoken of here, are just enough to name it a disgraceful and unblushing robbery.

If the grievances I have already advanced are insufficient to claim the interposition of his Lordship, it would be folly to swell the aggregate by the detail of a hundred minor annoyances I have unceasingly experienced. It is to me a subject of sincere regret, that I should find myself, for the first time in my life, at issue with persons in authority, and under the necessity of calling his Lordship's attention to communications no doubt held puerile and unimportant; but as they are, nevertheless, to me of vital consideration, and the cast of my life may probably be influenced by the notice they engage, I trust his Lordship will give them that attention I solicit, especially when informed that I have not another capital to disburse, for the capricious dissipation of another Government.

Why I should have been so persecuted is to me a matter of

as much astonishment as the relation of the fact appears to have been to Earl Bathurst, because my conduct in the colony has uniformly challenged a very different treatment; but, as every person of superior pretension is more or less involved in this hostility, I can only conclude it to be an essential of that system whose manifest tendency is to crush the independent, disgust the intelligent, and continue the colony in its primeval state of vassalage and slavery. If instances were wanted to confirm this opinion, it would be only necessary to cite the arbitrary removal of Captain Campbell from the magistracy, and the motives of Major Pigot for quitting it; two men, beyond all others in the district, so eminently qualified to contribute, by their integrity and their exertions, to its prosperity; and if universal suffrage could be influential, the latter would long since have been our landdrost.

If, beyond this, I may be permitted to hazard a more personal conjecture, sanctioned as my opinion is by the concurrent testimony of every intelligent traveller who has visited us, I might add, that the arrival of the settlers in this colony was a matter of grievous vexation to Lieut.-Colonel Bird; he has spared no efforts to defeat the object, and frustrate the energy of their enterprize; he has been marked, personal, and undeviating in his attempts to degrade the respectable, the well-informed, and the superior portion of the emigration, by acts of his administration that could not possibly have any other tendency; and to his influence, and his alone, is universally attributed every misery, beyond the wheat failures, the settlers have experienced. Whether he is Jesuit, Mussulman, or Pagan, is in the general estimation here a point of no importance, his offensive privileges lay alone in that extraordinary influence and domination he has attained, and which are esteemed extra-official, and not recognized by the mother government.

Upon the whole, instead of finding myself in that situation of respectability and independence, to which I brought with me paramount pretensions, and to which my conduct furnishes an additional claim; instead of finding the capital I have sunk gradually retrieving itself, as the expected reward of my industry and perseverance, I am opposed in every possible way by the Government; my name illegally branded by it with bankruptcy, my just demands upon it withheld, denied exclusively

the protection deemed necessary to every other settler, and my abstract pecuniary condition some thousands worse than when I embarked in this ill-fated enterprize, so decried and so opposed by the rulers of this colony.

I have confined myself in this letter to my own particular grounds of complaint against the colonial administration, because it is my decided intention to vindicate the emigration generally by publishing its history. In this development of a string of facts, as extraordinary as ever interested the public, will be found my apology for the presumption, but in better motives than the provocation I have received, the object of their disclosure.

I should fully account for so long a period intervening between the receipt and acknowledgment of your letter, but that a statement of the causes of this delay might produce renewed accusations against me of intemperance and indiscrimination; terms, it appears, applicable to consequences, without the necessity of reference to their origin; a principle which inflicts additional agony upon the victim immolated in proportion to the expression of his pangs.

I am, &c. (Signed) B. BURNETT.

B. Wilmot, Esq.
&c. &c. &c.

## Continuation of Narrative from date of last letter, in answer to Mr. Wilmot:

I shall now take up my statement from the period of my last communication to the Colonial Department, 12th August, 1823, premising, that from facts developed by myself I am strictly justified in a suspicion that that communication, although sent in triplicate, has been suppressed by the Colonial Government. What I have established by incontrovertible facts at the Cape, I need have no scruple in promulgating at home; I therefore charge the Colonial Government with invading the privacy of correspondence, and intercepting communications between the Colony and the Mother Country, through the medium of the post, and I am prepared to prove my charge.

My condition at length becoming absolutely insupportable, about the period of writing to Mr. Wilmot, I determined to bring matters to issue by laying my case before the next commission of circuit, in a legal form, and I accordingly gave

the proper authority instructions to commence actions forthwith against Robert Hart, his Excellency's confidential steward at the Somerset farm, and Mr. Vander Riet, the sequestrator. To explain the grounds of this proceeding, I must recapitulate some circumstances more fully than they are disclosed in my letter to Mr. Wilmot.

The farm therein alluded to was the property of this Hart, and hired by me on lease for three years, renewable at my option, for three years more, giving me the right of purchase, for a sum specified, during any part of the whole period. That it was my intention to make good the purchase will be at once manifest, when I state the fact of my having sunk twenty thousand rix dollars upon it during the first year of my occupancy, and that Mr. Hart's action against me for the recovery of nine hundred rix dollars (from whence all the legal persecution I have endured has emanated) could be the result only of the basest cupidity, must be equally apparent from the same circumstance, because no man actuated by principles of common honesty, or regard for public opinion, would think for a moment of persecuting such a tenant as I had proved; the truth is, that superadded to much personal hostility, there was an irresistible temptation in the chance of appropriating to himself the fruits of my capital and industry, which the known dislike of the Government to me rendered far from improbable, and he well knew, also, that to annoy me in any way was a sure passport to that Government's favour. It is scarcely necessary to say that his conduct was universally decried; every person exclaimed against it as equally cruel and unprincipled.

All that I know of his proceedings in this affair was, that a messenger left, at different periods, three Dutch papers at my house without translations, purporting to be summonses to Cape Town, until the landdrost sent for me to propound what he called a sentence, in favour of Robert Hart, for nine hundred rix dollars. It was then explained to me, that unless the money was immediately paid, or property sufficient to cover its amount was placed in the hands of the sequestrator's agent, that I should be declared insolvent, and my estate would be brought to sale. I objected to this, from the excessive harshness and severity of such a proceeding, and also, that as the whole of my property was mortgaged to the firm of Ebden and Eaton

for a considerable claim that house had upon me, there was no property to offer, but that I had a claim upon the commissariat for grass supplied the Cape Corps, which would more than cover the amount, and this I formally tendered; Mr. Rivers, the landdrost, without assigning any reason, peremptorily declined receiving this claim in payment, and refused even to allow a protest I drew up on the occasion to be deposited with the proceedings: to avoid any future digression, it will be best to explain here that the mortgage to Messrs. Ebden and Eaton was given at the suggestion of a number of persons, some of them Government functionaries, and at the express wish of Mr. Eaton, solely to defeat the manifestly projected rascality of this Hart.

In the course of a post from this interview with the landdrost, I was gazetted in the newspaper as insolvent, and my estate advertised for sale within the customary term. I discharged all my people in consequence, declined a very profitable contract I was about undertaking, broke up my establishment altogether, and begun to take measures for my return to England; on the day, however, preceding the sale, it was suspended by public notice, and an intimation to this effect was despatched to me by the landdrost; struck with astonishment at a proceeding so arbitrary and irregular, one of equal injustice and cruelty to all parties concerned, I went immediately to the district secretary to have it explained; from him I learnt that Mr. Eaton had undertaken to discharge any claims existing against me, and that I was free to proceed in my own affairs as I had hitherto done. I could have no reason to feel other than the most perfect satisfaction with this official assurance, and accordingly I resumed my occupation with my usual enterprize and spirit.

The suspension, however, of my operations, and the loss of the contract, were attended with a serious injury; this, in strict equity, should have been made good by the Government, because, as there was no manner of truth in the secretary's account of Mr. Eaton's interposition, the sale had been stopped by its own arbitrary act. The publication of my insolvency was either legal or illegal: if legal, it was unjust to retard the sale; if illegal, scarcely any recompence could be an equivalent for the injury I had sustained: nevertheless, as all I wanted

was to be left in the peaceable enjoyment of my property, and to be protected against this scandalous attempt at robbery, I bore patiently with these losses, and only sought, at the hands of the Government, the revocation of the advertisement by which I had been illegally declared insolvent.

On the day the second year's rent of the farm became due, Mr. Hart applied for it, not in the ordinary way, but through the medium of a messenger of the court, who called upon me late in the day, at a tradesman's in Graham's Town. It was not likely I should have six hundred dollars in my pocket from home, or that I should pay such a sum to a person not legally authorized to receive it, far from sober when he applied for it, and that at twilight in the evening; but as the application had been made through an official channel, I repaired on the follwing day to the secretary, and formally tendered it. The secretary declined to receive it, and referred me to Mr. Hart's general agent in Graham's Town; the agent likewise refused it, so that I had no alternative but to await Mr. Hart's arrival in Graham's Town.

In less than a month from this period, and before any opportunity offered for discharging the rent, I was served with a notice from Hart, sanctioned by the landdrost, to give up possession of the farm within the ensuing twenty-four hours, and a formal intimation from the latter, that two impartial persons would be forthwith sent to assess the value of such improvements as I had made upon it; I immediately sent a protest to the landdrost against these proceedings, and of sufficient efficacy to prevent any attempt at the threatened ejectment, though the assessment took place.

The conduct of this assessment was such a burlesque upon consistency that its audacity absolutely staggered the public. The two impartial persons chosen, in a district mainly English, were two Dutch boors, both incapable of appreciating the style of improvement I had effected; and either of whom, in the purchase of an estate, would not have allowed a single stiver for an erection upon it equal to the London mansion house! They were, moreover, Hart's particular friends; had had extensive dealings with him, were under considerable obligations to him, and, in a word, were wholly in his power. This is, however, so trifling an instance of the oppression I have experienced, that I should scarcely think it important enough for the trouble

of relation, but that it serves to illustrate the invariable practice at the Cape, where every subject's property is at the mercy of the local authorities, and consequently at the Government's. My expenditure exclusively upon the farm, at this period, was upwards of twenty-three thousand dollars. The improvements were assessed at *thirteen hundred.*

Whether owing to the remonstrances I made on this occasion, or to any compunction in the Government, I cannot pretend to say, but no further measures were pursued until the arrival of the ensuing commission of circuit, when Mr. Hart brought his action of ejectment against me, founded on my insolvency, as published in the Cape Gazette, and the non-payment of the last year's rent; whilst I, on the other hand, instituted proceedings against him for the illegal attempts he had already made to eject me, and for the recovery of damages thereon.

I have been particular in relating all the foregoing circumstances, because they are indispensable to a clear development of the iniquitous treatment I have experienced; and I earnestly claim attention to the proceedings of this commission of circuit, so decisive as they were of the charge I have advanced.

The commissioners on this occasion were Messrs. Buissinne and Bentinck: Mr. Hart's action was first called, when, to his utter astonishment, he was told by the court that it could not be maintained; that I was not insolvent; that the publication alluded to originated in mistake; that I was, consequently, as free to act in my own concerns as any other person; that as his interruption of my proceedings on the farm had occasioned it to lie unproductive on my hands, he had no right in equity to demand rent; and in answer to his application, that I should be compelled to restore the title deeds, he was informed that as they were, to all intents and purposes, my property till the expiration of the six years, it could not be complied with. On the other hand, my action against Hart was declared to be good, although untenable in its present form, from the omission of Mr. Vander Rict's name, whom, as equally culpable, I should have joined with Hart in my suit for the recovery of damages.

What, may I be permitted to ask, could be more conclusive than these public declarations of the commission? It was here announced in open court that I was not insolvent; that the publication had arisen from mistake; in addition to which, if

confirmation had been wanting, I maintained an action at the same sessions against a tenant of my own, and cast him. Could it be even conjectured that two judges of the worshipful court would pronounce a decision liable to be rescinded by any but a superior tribunal, or run the remotest risk of leading me into measures involving no less a consequence than that, if I was a bankrupt, every day of my life I became a fraudulent one! The payment of a bill, nay the purchase of food for my family, would become, under such circumstances, acts of delinquency, by the laws of the colony.

The twelve months intervening between this and the ensuing commission of circuit were marked with the same spirit of persecution as the former. Fresh attempts were made to eject me from the farm. I received summons after summons to Cape Town, there to answer fresh proceedings against me on the part of Hart; and when I had made preparations for this formidable journey at a considerable expense, it was intimated to me that the whole mass of dispute between Hart and myself was finally referred for legal decision to the commissioners of circuit about proceeding to the frontier.

With the conduct of the last commission in review, and absolutely exhausted with anxiety and suspense, I hailed the approach of these commissioners with inconceivable pleasure, satisfied that even if deficient in that manly independence and impartiality so characteristic of Messrs. Bentinck and Buisinne, they would scarcely dare, in violation of all consistency and uniformity of proceeding, to manifest themselves the tools of the Government, in the very teeth of the Commissioners of Inquiry, who had recently arrived at the Cape. In what degree these hopes were realized I now resume the course of my narrative to disclose.

The actions I gave instructions to bring against Hart, and the sequestrator, were two, on the grounds already stated. These were divided and subdivided by the district clerk into five, and again as capriciously amalgamated by the court into three, so that with the nature of their separate or individual merits I am utterly unacquainted; the aggregate amount of damages laid was thirty thousand rix-dollars. Mr. Hart also brought his action against me, which, by the same species of amplification, was multiplied into four.

It will be here necessary to point out that, as the very basis of all this litigation was the publication of my insolvency in the Cape Gazette, the merits of every action resting entirely on the simple question, was that publication legal or illegal? All matters in dispute between us merging in the issue of this one question, it was obviously the duty of the court to give my action against Mr. Vander Rict, the sequestrator, the first hearing; indeed, with any regard to justice, it was their only course, because the issue of this cause would inevitably settle the point, and was intended as a preliminary to any of the suits against Hart: any other mode was a manifest incongruity, about as absurd as to try a man for high treason on an assumption of overt acts that never had existence. But this extraordinary court of justice thought otherwise; and, to the utter astonishment of every individual throughout the colony acquainted with the circumstance, they refused entertaining this suit altogether, referred it for decision to the full court at Cape Town, assumed its unfavourable termination for me as a certain event, and upon this postulate, adjudged all the causes at issue. The public was absolutely horror-struck at this monstrous proceeding, so contrary to justice and the universal expectation; the very secretary to the commissioners ejaculated his surprise, and recommended me to appeal. Several other functionaries confessed equal astonishment; one of the hemraads, notoriously servile to the Government, and a man of singular reserve in his conversation, admitted to me, in confidence, that the whole affair was, without exception, the most flagrant instance of venality, prostitution, and execrable injustice, that ever came beneath his observation; and that no doubt could exist but that I had been tried by the Government at Cape Town, and that these men were mere vehicles of its pleasure; while Mr. Hart himself gave currency to this opinion by publicly boasting that, in answer to a letter he wrote the Governor, his Excellency had expressed himself in terms very favourable to him; that he had sent to Sir John Truter, the Chief Justice, had given him *instructions* on the subject, and that on the arrival of the Commissioners of Circuit he should be put in possession of the farm.

I should be very sorry to encounter my Lord Bathurst's further reprehension for want of temperance in my language, but matters have come to too terrible an extremity for me to tem-

porize. God knows there has been no moderation in the treatment I have experienced; and it is not because Messrs. Borcherds and Truter, or Lord Charles Somerset, are clothed with power that I am to submit to their iniquitous oppression without complaint, or an appropriate use of terms in the relation of my grievances. I am stating facts known to thousands; facts that have excited universal disgust and indignation; and it would be a compromise of integrity to conceal or qualify them.

In one of the actions brought against me by Hart, the testimony I adduced in disproval of his charges was so overwhelming that I left five witnesses uncalled, and the court could not avoid giving judgment in my favour, but it decided nevertheless that I should pay the costs; a decision that excited an instant burst of indignant laughter in the audience, and one, I will venture to say, likely to prove incalculably mischievous in its effects. What greater incitement can be held forth to vexatious and oppressive litigation than such a result? A bad neighbour, through the instrumentality of such men, could at any time crush his victim; perfectly indifferent as to the issue, he would have nothing to do but institute suit after suit, no matter on what pretence, and thus easily effect his ruin in law charges alone.

The conduct too of these judges, on every occasion connected with the proceedings before them, was distinguished by the grossest partiality. Hart, high in the confidential service of the Governor, with thousands of the public money constantly passing through his hands, and possessed of no small share of local patronage, was surrounded with dependents, whom the court permitted to become auxiliars to his purposes. Innumerable questions to evidence, as insulting to me as they were irrelevant to the subjects litigated, were publicly written by these persons in court, and handed over to him in spite of every remonstrance I could make. One person, to my utter astonishment, declared that I was not only a bankrupt, but a fraudulent one, in the very teeth of the declaration made by Messrs. Bentinck and Buisinne at the last commission; and the court absolutely ordered the Board of Landdrost and Hemraaden to make formal inquiry into the merits of this accusation. Conscious that no action of my life could bear the imputation of meanness or dishonour, much less of fraud, I was staggered at

this attack, and apprehended some plot for my destruction, until the grounds of it proved to be not any specific charge of delinquency, even had I been a bankrupt, but that I had bought and sold since the publication in the Gazette. My causes with Mr. Hart, which occupied only a portion of three separate days, were protracted in their hearing to eleven, although I resided three miles from Graham's Town, and was throughout this period so ill as to be scarcely able to stand, and so hoarse with coughing as to be nearly inaudible.

My only resource now was to appeal from these judgments, and I certainly took some consolation to myself in the triumph which awaited me when I should expose them in Cape Town; but as I could not, by any importunity, procure copies of the recent proceedings, so essential to the prosecution of my appeal, I thought it necessary to address the Governor at once, to recount to him the conduct of these judges, and to request, what surely I was entitled to, that it should be investigated. I accordingly memorialed him upon the subject.

In the meantime, although appellant in all the actions to the Court of Appeals, the decisions of the Commission of Circuit were immediately acted upon. The farm was forcibly taken from me at the threat of the Cape Corps bayonets. My own estate, for which I had refused thirty-two thousand dollars, was brought to the hammer without regular notice, and, with only two bidders present, sold for four thousand six hundred dollars!

But, the determination of the Government to persevere in alienating me from its protection, was visible on every occasion which brought me before its notice. Just before the arrival of the Commission of Circuit, we had experienced one of the heaviest floods ever known in the Colony, in which I lost the whole residue of my property,—a new house I had built on my own land was totally destroyed. The waters rushed in with such impetuosity that Mrs. Burnett narrowly escaped with life, with nothing on but her night-clothes. She was borne through a sea upon the shoulders of labourers. For three days, with no access to the town, we had barely food to sustain life, and no change of clothes. One would have thought that his Excellency's beneficence might have manifested itself upon an occasion so powerfully taxing it. His Excellency, however, did not even condescend to answer a memorial I sent him on the subject;

in which, after setting forth the deplorable condition we were reduced to, I solicited some temporary relief by way of loan, but on the contrary, ordered his Majesty's fiscal to commence a prosecution against me forthwith, founded on my complaint against the Commissioners of Circuit.

As my claim on the Commissariat for grass supplied the Cape Corps is intimately connected with these judicial proceedings, I shall here introduce a brief account of the transaction. On first taking possession of my land, I found that this regiment supplied itself from thence with grass and fuel, without the formality of asking leave, or any apparent consciousness of committing trespass; it became necessary to check this, and I accordingly desired the foragers to desist, with a threat of complaint to their commanding officer should I find them upon my premises again. This produced a message from Captain Somerset, that as the troops must have grass, and there was none other in the neighbourhood, he would thank me to let the men cut upon my land, and I should be paid for all that was taken. With a large herd of cattle of my own, I was particularly solicitous to preserve the grass, but wishing to be friendly with Captain Somerset, I consented. The supply was taken exclusively from my land, till Captain Somerset was about quitting the frontier, when I applied to him for a certificate of the quantity delivered, as an authority for its payment by the commissary; Captain Somerset was at this time busily engaged attending the sale of his effects, and could not conveniently give it, but he promised to leave it with the commissary on the following morning, before he left Graham's Town. I felt so satisfied with this assurance, that it was late the next day before I went to town, when I discovered, much to my astonishment, that Captain Somerset had left the frontier without depositing the certificate. I felt no suspicion of juggle on the occasion, but attributed the omission to forgetfulness; and as a Mr. Francis was about proceeding after him, I despatched a letter by this gentleman, reminding him of his promise. He expressed to Mr. Francis his regret at the neglect he had committed, and promised to forward me the voucher by the first person of his suite who should return to Graham's Town, which pledge he also infracted.

All my efforts to obtain payment for the grass proving fruitless, I summoned the officer commanding the corps before the Commission of Circuit at Bathurst, who was ordered to give me

a certificate for what quantity the regiment had taken since Captain Somerset's departure; this he stated to be forty-eight loads, admitting, at the same time, that even these had been taken contrary to his positive orders, that neither wood or forage should be drawn from my land; and the court referred me to Captain Somerset for the adjustment of the former claim, who, from that time, never answered any application I made to him on the subject.

When Sir Rufane Donkin paid his second visit to the frontier, I submitted this grievance to him. He expressed to me, and also to Captain Campbell, much indignation at the treatment I had met; ordered his Aid-de-camp to give the D. A. Commissary-General instructions for the immediate liquidation of the claim, and subsequently sent me a written assurance, through Colonel Bird, that I should positively be paid. On the arrival of Lord Charles Somerset, I renewed my application; and, after a long, fruitless, and evasive negociation, I received the exhibit No. 1. When Major Somerset reached Graham's Town, I lost no time in calling his attention to the subject. He told me, in the presence of Mr. Rivers, the landdrost, that the claim should now be discharged; that, as the accounts which embraced it had been closed more than two years, the commissary could not now pay it upon his certificate, which otherwise he would cheerfully give me; but if I would make oath before the landdrost of the quantity of grass delivered, he would forward my attestation to his Excellency by the following post, who would, in return, transmit him his warrant for the full payment of the claim with interest, *and all this he promised upon his word of honour*.

Repeatedly as I had been deceived by Major Somerset, I could not permit myself to question his sincerity after a pledge so solemnly given, and with a confiding frankness, which merited a different return, I communicated the important consequence attached to the payment of this money; that it established the illegality of the sequestrator's measures, and all ulterior law proceedings consequent upon them, and thus allowed myself to be defeated by my own ingenuousness. From that hour I heard no more of the grass claim; and no doubt exists, but that, to shield the sequestrator and the landdrost, who had refused to receive it in liquidation of Hart's sentence, the Government has

not scrupled to make me the sacrifice, by the commission of as barefaced and disgraceful a robbery as ever was perpetrated by a burglar or a highwayman.

Not to recur again to this claim, I shall here conclude its history. On my arrival at Cape Town, I renewed my application for its settlement to the Governor; and here, just as I had anticipated, the obstacle projected was precisely the one opposed to me at Graham's Town, only converted to the Cape. As nothing could be done heretofore without communicating with the commander of the forces, so it became now as necessary to correspond with the commander of the regiment.

The first intelligence from Major Somerset, was a denial of the claim altogether, from the circumstance of his finding no vestige of it in the regimental accounts. How came he, then, twice to promise me a voucher for the liquidation of a charge which had no existence? and how came he to promise, upon his honour, that his last communication to his father respecting it should be of a nature to insure the transmission of his warrant for its payment by return of post, coupled with an observation (in his own phraseology) that since his return to the frontier he had twice had his knuckles rapt for not seeing it discharged? Thus, after three virtual recognitions of its justice, and the most solemn assurances that it should be settled, so driven were they for expedients to defraud me, as to resort to the despicable subterfuge of denying its existence altogether, from the fact of my confidence in Major Somerset's honour having induced me to neglect the precaution of insisting on certificates being given for every separate load of grass as it was taken from my land; so that a compliment to this gentleman's integrity has become at last the only available weapon in their hands to defraud me of my right.

But expedients of this sort, founded in trick and falsehood, are sure to be traversed by an opposition that has truth and justice for its basis. It fortunately occurred to me that Mr. Francis was at this time in Cape Town, and to him I applied for a notarial statement of his delivery of my letter to Major Somerset, and the answer he received; and this, with my own notarial declaration also, I lost no time in laying before his Excellency. I justly argued, that if the point could only be settled by weight of testimony, surely the attestations of Mr. Francis and myself,

unimpeached in our veracity, would bear down the single *ipse dixit* of Major Somerset, who had taken pains to record himself equal to the utterance of premeditated deliberate falsehood.

Shortly after I had an interview with his Excellency, in the presence of his aid-de-camp, Captain Fitzroy, when, to my astonishment, his Excellency betrayed the most entire ignorance on the subject, although the correspondence upon it was voluminous, and had occupied a period of three years. After I had stated the case to the Governor, Captain Fitzroy, with that liberality of mind which I am persuaded is his characteristic, observed, in the most handsome manner, that, with submission to his Lordship, he thought Mr. Burnett's word of honour might be allowed to adjust this business without any farther proceeding whatever. His Lordship, however, thought proper to dissent from this proposition, observing that the signature of every officer in the service conveyed a pledge of equal sanctity with his word of honour, or even his oath, and that the least he could do would be to consult Major Somerset on the occasion. To this I objected that Major Somerset could not consistently deviate from the statement he had already transmitted; that, as it was a matter involving neither inquiry or research, but resting entirely with his discretion to infract or fulfil promises repeatedly given, I should consider the case altogether hopeless, and our discussion of it quite unsatisfactory, unless his Excellency would be so obliging as to assure me that the *quality* of his communication to Major Somerset should insure me the return of the certificate. His Excellency smiled at this, and answered, "Well, Mr. Burnett, leave the case in my hands, and I promise to do the best for you in my power."

Now, I was perfectly satisfied. I looked upon this virtual promise of the Governor as tantamount to his order for the money, not only from a natural reliance upon such authority, but from my conviction that no doubt had at any period been entertained of the justice of my claim. To prove this, it will be only necessary to state, that during the course of its investigation, it was made manifest that more than double the number of loads of grass were taken from my land than I had charged for; and it was as well known that my conduct towards this regiment was marked throughout with liberality and forbearance. Fuel to an enormous value had been taken, for which I made no charge;

my property had been constantly trespassed upon; my gardens robbed, and my family annoyed by this corps without retaliation. On one occasion, I received the thanks of the magistracy for my moderation in declining to prosecute six of the privates whom I had in custody for theft; and on another I forbore to proceed agninst a gang of them who attempted to assassinate me. Five rapes had been attempted, and three perpetrated, by these miscreants upon settlers' wives, chiefly upon my premises, which a respect for his Lordship's feelings prevented my disclosing to the military secretary at the Horse Guards.

To conclude: Major Somerset's communication was at length announced to me, which proved a mere echo to the one preceding it; and the best commentary I can possibly offer upon this iniquitous transaction is to add the final result—videlicet: His Excellency's proposition that I should submit my claim to the inquiry and adjudication of a board of Cape Corps officers—that is to say, submit an inalienable *bona fide* right to the caprice of men smarting under my merited castigation for conduct disgraceful to them as christians as well as soldiers.

It is barely necessary to add, that I spurned this proposal as became me, merely intimating to his Excellency, through the medium of his aide-de-camp, that as I found it impossible to obtain justice at the Cape, I should cease to struggle for it farther, but look alone to a quarter from whence it had ever flown freely and unpolluted—his Royal Highness the commander-in-chief.

Soon after the justiciary sittings had closed in Graham's-Town, the Commissioners of Inquiry arrived, and I laid my case before them; but I decline making any allusion to these gentlemen, both from my ignorance of any steps they took in my particular case, and the inviolable secresy which I think should accompany any knowledge or conjecture of their proceedings. The colonists no doubt look steadfastly, as they do anxiously, to the result of their inquiries, with that reliance which talents and integrity must at all times insure.

In obedience to the fiscal's citation, I now proceeded with my family to Cape Town, where I arrivde in the month of April last. The day of my trial had been delayed two months at my own request, and now, on my representing to the court that it would be impossible for me to prepare my defence without

copies of the recent causes in Graham's Town, these papers were ordered me, and the trial was postponed two months longer.

During this interval, a circumstance of the most extraordinary kind occurred. A paper was said to have been found pasted on a post in one of the most public parts of the town, accusing the Governor of having committed the most execrable of all offences with the physician to his household, and a proclamation immediately appeared offering a reward for the discovery of the publisher. Universally unpopular as his Lordship was, this unmanly attack excited general disgust and indignation. The merchants and public functionaries took the matter up with great spirit, and increased the reward to something above twenty thousand rix-dollars. It was at this juncture that, while walking with a friend on the parade, I was summoned home by a servant with intelligence that the house where I lived was beset by officers of justice, and myself inquired for; I repaired thither on the instant, and was received in the hall by his Majesty's fiscal, and a member of the court of justice, attended by the secretary, who announced their errand by showing me his Excellency's warrant for the seizure of my papers to search for a copy of this infamous placard. It is impossible to express the indignation I felt at this proceeding. That his Excellency actually suspected me of having any participation in this business I felt assured was not the case; and the conduct of the gentlemen delegated to perform so revolting a duty, very soon convinced me that they also thought me incapable of it; but it required no great depth of penetration to reconcile this or any other despotic measure with his Excellency's invariable policy. As a persecuted individual, who had manfully opposed every attempt to crush me, I stood high in public regard, and it was especially piquant to his Lordship to abate that regard by circulating a probability of my being implicated in this transaction. I extracted, however, some satisfaction from the surprise with which I was taken. I had manifestly no time for preparation or the secretion of any paper, so that, after the search, my innocence would not only be established in point of form, but in essence also. I therefore conducted these gentlemen to my room, the door of which, from their first arrival, had been strictly guarded by police officers, and delivered to them the key.

earnest that Lord Charles, from some inscrutable motive, was resolved to sacrifice me, and I came to a corresponding determination of pursuing such measures of precaution and defence, that I have no scruple in confessing the police would have had little reason for felicitation should we at any time have come in contact.

On this last occasion my situation was truly critical; I had been seen by the sheriff walking on the terrace in front of the house, so that no doubt of my retreat any longer existed, and escape was now generally supposed to be impracticable. My good fortune, however, did not desert me; in the disguise of a military officer, and with a well-laid plan to render it effectual, I once more made my escape, and achieved my retreat to a place of safety.

As the *Alacrity* was to sail in the course of two days, it now became necessary to obtain the passport; for which purpose Mrs. Burnett, accompanied by a gentleman, called upon the fiscal; finding him absent, they repaired to Mr. Ryneveld, the deputy fiscal, when the intervention of a fresh difficulty excited in us all considerable alarm. This was no less than a stipulation, on his part, that I must be actually reported on board of ship by one of his officers before the passport could be granted; as a condition of this kind, so utterly unnecessary, was calculated to excite suspicions of treachery, these were very frankly avowed; but Mr. Ryneveld gave the most satisfactory assurances on this head, not without expressing some indignation at my supposing him capable of practising any deception; "But," added that gentleman, "I am not at all surprised at it when I reflect how Mr. Burnett has been treated." The passport was, nevertheless, sent the same day to Mrs. Burnett, and on the following one I embarked on board the *Alacrity*.

I have now, in terms as concise as the subject would admit, given a summary of the persecution Earl Bathurst cannot conceive it possible I should have experienced, and I have adhered throughout, with the most scrupulous and rigid regard, to truth; independent, however, of these main accusations against the Colonial Government, I could relate a hundred little petty annoyances, not perhaps so fatal in their effects, but infinitely more galling in their operation, and more conclusive of the

charge advanced; but if what I have already stated is insufficient to obtain the interposition of his Majesty's Government between my utter ruin and the unparalleled oppression of its Governor at the Cape, it would be futile to adduce any thing farther. From the earliest period of my location as a settler, I have been thwarted and opposed by every instigation of the most ingenious malice; my credit has been blasted, and my character defamed, by an act of flagitious illegality, involving in it the sacrifice of my capital, my domestic happiness, my health, and my peace of mind; upon a sentence which has no basis in either law or equity, and for an offence which the statutes of my own country virtually invite the subject to commit, I have been banished from the land of my interests, my hopes, and my best connections. At the caprice of that Governor's suspicions, or his fears, the privacy of my correspondence has been twice violated, and my actions subjected to political surveillance; and, finally, after inflicting as complete a ruin as the most insatiable tyranny could propose, I have been hunted down, from covert to covert, like a beast of prey, and compelled to fly the very land from which I have been so iniquitously banished.

Nothing on my part has contributed to such proceedings. I am in possession of all my correspondence with the Colonial Government, from its outset up to its close, and nothing can be gleaned from it extenuatory of such treatment; if at any time I have used terms of severity, they will invariably be found justified by the occasion, or I have lived to little purpose if I have yet to learn that the aggressions of power are not to be repelled and its tyranny opposed. That Lord Charles Somerset could have pursued me in this way without some motive it would be rash to maintain; on the contrary, he has been influenced by very powerful ones; it has been my lot, very undesignedly, to traverse and circumvent him on many occasions, and his Excellency is proverbially as indiscriminate as he is implacable in his resentments. It was sufficient offence in me that I rescued the character of Captain Stockenstrom, the landdrost of Graaf Reinet, from opprobrium, and chastised a military scoundrel. It would have been equally so, that I exposed the nefarious green forage system; that I conducted the defence of three settlers, tried for trafficking with the

Caffres, and obtained their acquittal, although they stood condemned in Earl Bathurst's office without trial; it would have proved quite sufficient provocation to his hostility, that I established the utter inutility and licentious insubordination of the Cape Corps, and prevented the right of stuprating our wives and daughters becoming one of its immunities; or that I have the reputation of detecting in the fractional items of a sham contract an enormous diversion of public money. Less than these offences would be sufficient to call forth the vengeance of a man bearing his faculties with more meekness than his Excellency Lord Charles Somerset.

With regard to my political principles, I hold it a duty to disclaim the imputations his Excellency has cast upon me; because, as he has not scrupled to call me the King of the Radicals, and represent me at the Cape as turbulent and disaffected, it is fair to infer, that if he has thought proper to notice me at all to his Majesty's Government, he has described me in similar colours. I can solemnly declare, that I never gave a political opinion in my life; that I never interested myself in any political question, or made the measures of any government the subject of a moment's reflection. The whole of my kindred and connections are in their principles what is termed ministerial; and so far from any action of my life impeaching my loyalty or attachment to monarchy, these principles are so inherent in me, that no persecution or accumulation of injury could ever tempt me to forego the one or the other. But this species of attack is so common at the Cape as to become at length quite innoxious. If Lord Charles has a dispute on a race course, the party at variance is set down by his minions forthwith as a radical, so that the term applies to those persons personally obnoxious to his Excellency rather than his Government; but to show the unwarrantable uses to which this engine has been applied, his Lordship thought proper, in a private and confidential letter to the Reverend Mr. Geary, the pastor of Graham's Town, to caution him as to what society he should keep, and to denounce to him Major Pigot, Captain Campbell, Mr. Phillips, and myself, as disaffected radicals!! It would be superfluous to make any comment upon this anecdote.

I have, likewise, throughout this statement, sedulously avoided making any observations upon his Excellency's government not immediately connected with my own case. It would be useless to conceal that I am in possession of that vast accumulation of matter which forms the subject of the present official inquiry at the Cape, and I may venture to add something beyond it; but I consider my case much too important in its own elements to require any adventitious aid. If, therefore, I am fated to join issue with his Lordship, it shall only be at the Bar of the House of Commons that I will make my disclosures, and I will confess that I am armed at all points for the contest.

Upon the whole, I have made out a case of the most unparalleled injustice and persecution, and I look with unbounded confidence to his Majesty's Government to do me right. I found this hope exclusively upon the merits of my case, with opinions involving no one political speculation, and with views embracing no sinister dependence upon expediency. I have been defrauded of my property by Lord Charles Somerset's injustice, and my pursuits in life have been, for the last five years, held in abeyance by his persecution. I can repeat, without boast, the universal sentiment at the Cape, that not one man in a million can be found capable of sustaining an equal weight of oppression with the courage and equanimity I have manifested throughout; and it is as generally allowed that the display of these qualities has especially goaded his Excellency to the unwarrantable lengths he has gone, while, with the moderation of my conduct his Majesty's Government must be satisfied, whatever may be the representations of his Excellency, when they perceive the very grounds of my banishment to be an illegal prosecution, and a sentence emanating from that prosecution, which, if legal, it would fail to justify. His Majesty's remission, therefore, of the sentence of banishment, by which I can return to my family, my connections, and the conduct of the important causes in which I am appellant, will, I trust, be the forerunner of that redress I am soliciting, while in strict proportion to the confidence I have expressed in the justice of the Government will be my obedience to the wisdom of its dictates.

(Signed) B. BURNETT.

March 8th, 1825.

Now, although Mr. Wilmot Horton does not distinctly say, that the Commissioners of Inquiry were specially instructed to report upon my case, the grave charges I had brought against the Colonial Authorities make it fair to infer that they were so; while the circumstance of his pointing out their mission, as a ground obviating the necessity for conveying witnesses to England, can be regarded in no other light than a virtual reference of the case to their investigation and report. That they considered it so is obvious from their own letters. My first application to these gentlemen was made to them shortly after their arrival in the colony, when the following correspondence took place :

SIR, Graham's Town, September 2, 1823.

In a letter from Mr. Wilmot, the under Colonial Secretary, dated 17th December last, replying to some charges against this Government I deemed it my duty to press upon the attention of Earl Bathurst, his Lordship refers me to the Commissioners of Inquiry, provided they should deem my "case one they had authority to investigate."

As I fervently hope this authority has no limit, while one act of injustice remains to be redressed in the colony, I beg, sir, you will be so obliging as to submit my suit to their consideration; of which the enclosed copy of a letter to Mr. Wilmot is a very summary abstract.

The necessity of being present at the ensuing justiciary sitting in Graham's Town has alone prevented me making this communication in person, a satisfaction I propose to myself immediately after the close of its proceedings.

I have the honour to be, Sir

Your obedient humble servant,

B. BURNETT.

John Gregory, Esq.
&c. &c. &c.

SIR, Cape Town, September 26, 1823.

I have the honour to acknowledge the receipt of your letter dated the 2d inst., inclosing, for the information of the Commissioners of Inquiry, a copy of a letter addressed by you to Mr. Wilmot on the 12th ult.; and having laid your letter before the Commissioners, I have received their directions to acquaint you, that they have it in contemplation shortly to visit the new settlements in Albany, when they will take an early opportunity of communicating with you upon the subject of your letter.

I have the honour to be, Sir,
Your most obedient humble servant,
JOHN GREGORY, Sec.

B. Burnett, Esq.
Graham's Town.

GENTLEMEN, Graham's Town, Nov. 25, 1823.

I trust you will think it no manifestation of impatience that I should again apply to you on my own particular affairs, before that opportunity offers of personally disclosing them, which you have informed me will not be very distant. An event has, however, passed, so terrible in all its features, so crushing in its proximate consequences, and so ominous of future evil, that I should deserve all its inflictions, if I neglected for an instant to lay it before you.

In the copy of my letter to Mr. Wilmot, which I had the honour to inclose to Mr. Gregory shortly after your arrival in the colony, will be found my complaint of the conduct of Mr. Van der Riet, the sequestrator to this Government. The extraordinary and, I persist in saying, unwarrantable predicament he placed me in has continued up to this hour, a period of nineteen months, during which I have spared no efforts to induce some definitive measures, on the part of that gentleman, equally without success, or even attention to my requests. Anxious to quit a colony so intolerably loathsome to every man of independent feelings, I recently adopted the only apparent alternative left, and instituted suits before the last commission of circuit against Mr. Van der Riet, and a Mr. Robert Hart (the conductor of the Somerset farm) of whom I hold some land, for acts of aggression emanating from the illegal publication of my name as insolvent by the former.

My actions were simply two: the first against Hart and the

sequestrator, for illegally combining to dispossess me of the land, in violation of my lease; and the second, against Hart alone, for a similar ulterior attempt, and for the damages accruing upon both. These underwent a subdivision by the acting secretary, and were increased to five when brought before the court. Mr. Hart commenced four against me also, probably from similar extension, as they were condensed in the process to two, while mine were reduced to their original number, these having priority on the list of causes to be tried.

As the result of this mass of litigation depended entirely on the single point, whether I had been advertised insolvent legally or not, it surely was the duty of the court to decide upon this fact *á priori*, but no representation I made could lead them to this course, or induce them to give that cause the first hearing in whose issue the rest must inevitably merge: they manifested a decided determination at the outset to involve the proceedings in the utmost intricacy, to reject any suggestion originating with me, and so palpably to incline towards Mr. Hart, that my fate was generally predicted before the proceedings were half gone through.

Their decision, gentlemen, was one, I will venture to say, unparalleled for its violation of justice. My action against the sequestrator, which involved the question of insolvency, was referred to the full Bench in Cape Town, contrary to their solemn assurance that it should be finally argued before they gave judgment in the other suits, while the rest, whose very ground and essence depended wholly on this question—those in which I am plaintiff not being maintainable if insolvent, and those instituted by Hart being equally untenable if I am solvent—these were all decided in the true spirit of that sarcasm which says "hang him first and try him afterwards," and absolutely so decided as if judgment was already given against me in the one referred; indeed so conclusive is the public opinion upon this head, that it is generally said, if the full Bench were to pronounce sentence in my favour in the cause referred, that sentence would inevitably declare Messrs. Truter and Borcherds utterly ineligible to the high situations they at present fill.

Against such a terrific violation of law as well as equity I solemnly protested, and entered an appeal to the next superior

tribunal; but the decision of ruin by this court is forestalled, and, contrary to the precedent of every country where public enactments regulate society, while my appeal is still pending, they have left injunctions to carry their judgment into effect: thus, independent of the first incongruity and the legal suspension which should follow my appeal, I am undergoing all the ruinous inflictions of a sentence finally and irrevocably pronounced.

In one of the causes wherein Mr. Hart was plaintiff, the evidence was so decisively against him, that I forbore to call three witnesses in my behalf; this was given in my favour, *but I was condemned to pay the costs of it;* while the judgment, with no reference whatever to the ground of action, was so worded, as to strain at an apology for its folly.

During the whole course of the proceedings, Mr. Hart was allowed to be made the vehicle of the most slanderous interrogatories to the witnesses by a man named Huntley; papers were continually handed to him, suggesting questions that, without relevancy to the case, had no other object than to insult and wound my feelings. One witness, named Stone, had the audacity to decide at once upon the point referred, and to proclaim before the court that I was not only a bankrupt, but a fraudulent one! The judges eagerly adopted this slander, and although I had submitted four distinct exceptions, each decisive of the illegality of Mr. Van der Rict's publication of my insolvency, although the question itself had been referred by them to Cape Town for discussion, and the sequestrator had suspended the sale of my property immediately after its advertisement, nineteen months since, from a conviction of his having acted with informality and precipitation; and although Messrs. Bentinck and Buissinne, the able commissioners who sat here last year, had publicly declared, on this subject, that there was a *mistake* in the proceedings of the sequestrator, and that I was as free to act in my own affairs as any other man, still they assumed a possibility of the consequence without admitting the existence of the cause, and left instructions with the Board of Landdrost and Hemraaden to investigate Mr. Stone's charge, have it supported by evidence, and forward the result to Cape Town.

All this has been done with the most inquisitorial secresy; a public charge of fraud has been privately investigated, without

As many sheets of my defence, with a list of questions to evidence, in the pending trial were lying on the table, which would unavoidably fall under the fiscal's inspection, I cannot avoid pointing out the individiousness of selecting this gentleman to effect a search of my papers, while a search was simultaneously going on at Mr. Greig's, the printer's, by the deputy fiscal, against whom this objection could not lie, as he had nothing to do with the conduct of the prosecution against me; but so it is at the Cape.

After the search, which was conducted throughout with the most scrupulous delicacy, and every manifestation of feeling and reluctance, these gentlemen acquitted me of having any improper papers in my possession, and took their departure. As, originating in this affair of the supposed placard, an insult so gross, in all its bearings, had been passed upon me, I feel myself entitled to express an opinion upon the subject, especially as that opinion is now the pious belief of the community at the Cape. The placard, then, in question, was, beyond all doubt, written and affixed by Oliver the spy, in conjunction with another miscreant, (whose name it would at present be injudicious to disclose,) and torn down the moment it had obtained sufficient publicity for their nefarious purpose. I am prepared to enlarge most satisfactorily upon the subject, should it at any time become expedient. This opinion I had no scruple in disclosing before the court and the public on my trial for libel, and this most vile of all the human species is well aware that I am ready to stand forth his accuser at any time.

As this seizure of my papers was, professedly, in consequence of private information received by the Government, I now applied to the fiscal to give up the name of the informer, that I might prosecute him criminally. This gentleman assured me that my request should be complied with the moment the investigation then in progress was closed, and his Excellency, in person, made me a similar promise. Nothing, however, of the kind was ever fulfilled, and this calumniator remains till now unpunished.

My trial for the libel upon Messrs. Borcherds and Truter next took place, not only in direct opposition to the wishes of those persons, but against the better judgment of the fiscal

himself, who confessed to three different gentlemen, on separate occasions, that there was no existing law in the colony on which I could with any propriety be tried, and, in short, that he had not a leg to stand upon. It was my intention to have made a very elaborate defence, and have disclosed in it a history of the persecution I had sustained; but as this was impossible, without inculpating the Governor and his son to a very serious extent, and as a sample of the consequences accruing from such a course was then but too manifest in the case of a Mr. Edwards, who had just been adjudged to seven years' transportation for writing a letter to his Excellency, I declined making any defence whatever. The document No. 2 is my answer to a two hours' speech of the fiscal, rendered to me in court by the sworn translator in as many minutes, a circumstance I only mention as accounting for the paucity of my arguments against a speech which I perceive, now I have a copy of it, should have been more amply discussed.

The result of this trial was, my banishment from the colony for five years, with imprisonment till the period of embarkation. Against the latter part of the sentence I appealed to the full court, my trial having taken place before two of its commissioners only, when the court, after a protraction over the long vacation, thought proper to reject the appeal and confirm the original sentence. Before the appeal came on, I met the fiscal by accident in one of the court lobbies; we had some conversation together, and sauntered without any apparent design into his office. By some neglect of my notary in serving the fiscal's summons, I had forfeited my right to appeal, and was then entirely at his mercy; he apprised me of this omission, and inquired what course I meant to pursue? I told him, in consideration of my ignorance of legal forms, and the fault having originated with the notary, the court would doubtless, on my applying to it, purge the default and entertain the appeal. He strongly recommended me not to make any application at all to the court, with an assurance that it was not his intention to imprison me, provided I was sincere in my determination to carry the sentence into effect, and quit the colony by the first convenient opportunity. I very readily pledged myself to this, and observed that I should at once adopt his suggestion, provided he would give me such assurance in writing, otherwise,

without at all distrusting his sincerity, I might, on the first whim of his Excellency, find myself, *nolens volens*, in the Tronk. He stated, in reply, that if I would see him an hour hence, in all probability he should be able to comply with my wishes. At once perceiving his drift from this speech, and that it was a renewed attempt to induce an application from me to his Excellency for grace, I answered him emphatically—" Mr. Denyssen, I would have no manner of objection to lay myself under an obligation to *you*, and be proud to acknowledge it everywhere; but if you think I would receive any thing as a boon at the hands of Lord Charles Somerset, the Governor of this colony, you are indeed mistaken; nay, if the only morsel of bread with which I could sustain life was to be the gift of a man who has so remorselessly persecuted me, and whom I so thoroughly despise, believe me, I would reject it and die." I therefore applied to the court, the appeal was allowed, but the hearing was postponed over the vacation, evidently to give me an opportunity of quitting the colony in the interval.

No expedient for getting rid of a person obnoxious to his Excellency could be more simple in its conduct than that of banishing him for five years, through the medium of a court of justice so constituted as to render any opposition to his wishes a contingence next to impossible. I do not mean this as a reflection upon the court, because the most abject obedience to the will of the Governor is an unavoidable condition of its tenure, and no man can be expected to innovate upon precedents of a century standing, at the price of his daily bread, however he may be under the discipline of his conscience. The Dutch *morale* too, in this respect, varies materially from the English; and as the court is formed entirely of that people, not remarkably profound in jurisprudence, with the exception of one Englishman retired from the commissariat, they may safely do as their forefathers have done before them without much imputation of blame. It is true, an Englishman, accustomed to independent, learned, upright judges, and honest juries, is apt to get a little indignant upon such occasions; but as the colony is, to all intents and purposes, virtually Dutch, we may, possibly, have no right to complain. Be this as it may, it is an hypothesis which cannot extend to England. Great Britain is not one of Lord Charles Somerset's depen-

dencies, fortunately for humanity, and I do not permit myself to doubt for a moment that his Majesty's Government will redress those wrongs inflicted in a quarter where the most flatigious injustice prevails without remedy or resource.

I must here observe, and which, by the way, will readily account for the persecution I have suffered, that for the last three years the Colonial Government has attributed to my insignificant pen, all the libels and trash with which the colony has been inundated; lampoons, satires of attic wit, insipid, illiterate placards, or unintelligible doggerels, all have been indiscriminately foisted upon me; and so confirmed is this suspicion, that the fiscal, on the hearing of my appeal, made it an argument for my committal to prison, that several placards had recently made their appearance! Whether this originated in my having strung together a few couplets, on reading a very inflated account of the rivers in South Africa, and which were said to be personal on Mr. Rivers, the landdrost, I cannot pretend to say; but I can protest most solemnly that this suspicion is without the slightest foundation, and that I have neither lampooned, satirized, or attacked the Government in any way.

I now occupied myself in preparations for quitting the colony, and was still in the enjoyment of my liberty, although the original sentence of imprisonment was confirmed; but while busied in getting ready for my departure, which was to take place the following week, I was again subjected to the tyrannic measures of his Excellency. The fiscal, accompanied by his deputy, a member of the court of justice, and the secretary, once more invaded my dwelling with a warrant from the Governor, to seize my papers, on suspicion of my having libelled his Excellency. As I knew these gentlemen must perform their duty, I opposed nothing to the discharge of it, but contented myself with protesting in very strong terms against the continuance of such intolerable persecution. My papers were all examined, and nothing found, with the exception of the little poem upon the rivers, (see Document No. 3.) A considerable ferment was excited by this scandalous proceeding. A general alarm prevailed as to whose house would be beset next; inquiries poured in upon me from all quarters, and I was not left without very consolatary assurances upon the occasion. The

motives for this fresh outrage were developed on the instant, and universally stated to be his Excellency's apprehension of my return to England, and that the ceremony of seizing my papers was only to colour some plot in performance for sending me, under a sentence of the Court of Justice, a very different voyage to the one I was preparing for.

Nothing further transpired during the remainder of this day; but, early on the following morning, intelligence was sent me that my papers would be forthwith seized altogether, and that a warrant was then preparing for my committal to the Tronk. I lost no time in availing myself of this information, not with the remotest intention of evading any proceedings the Government might meditate against me, but merely to avoid imprisonment for the few days which I knew must intervene before the Court of Justice assembled. It was now Friday, and Monday was the day appointed for its convention. My first step was effectually to secure my papers; I then walked leisurely to a friend's house in the suburbs, where I proposed remaining till the Monday, and then surrendering myself in Court. I had scarcely been housed an hour, before word was brought that the fiscal with his posse had again searched the house for my papers, and that I was summoned to appear immediately before him. Nothing during these proceedings could equal the anxiety manifested by all classes for my safety. "I hope he is not taken," "God forbid he should be taken;" and a hundred other ejaculations of the sort were heard at every turn, while repeated offers of service and assistance were sent me from every direction. I think I may venture to say, that I entertained infinitely less apprehension from these measures, than any one of my friends in the colony.

I had scarcely received this information, before the sheriff and a large body of the police were seen approaching the house; and, upon the spur of the occasion, I was compelled to conceal myself beneath a bedstead. The worthy family that had sheltered me felt the most lively concern for my safety; and, by the adroit answers which were given to the sheriff's inquiries, an apprehended search of the premises was prevented; but the house was left beset with police officers, more than thirty of whom kept their station around it during the night, the greater part of which I lay concealed on the roof of a hen-house, partially hidden by its parapet. I had, in the

evening, despatched a friend to the fiscal, with a note expressive of my readiness to surrender to any decent messenger he pleased to send to me; but my friend choosing first to consult some gentlemen as to the propriety of this measure, very speedily returned with their positive interdiction of the step contemplated, and assurances that, in the universal opinion of the town, his Excellency entertained so much dread of my return to England, as to render my transportation to New South Wales, if taken, a matter of absolute certainty; that I had specimens enough of what reliance innocence or a good cause could place in a court of justice, and that as Oliver the spy was known to be actively engaged in the business, some plot was to a certainty in agitation, which might have for its object not only to deprive me of liberty, but of life. I was cautioned, if taken, to eat nothing in the Tronk, until the arrival of friends to administer to my wants, and to hold myself in readiness to follow up a plan then maturing for my escape.

Strong as these arguments were, I still felt a considerable reluctance to continue my concealment, conscious that the charge against me, whatever it might prove, was utterly destitute of any foundation in truth. I thought it a compromise of rectitude to assume, for a moment, even under such appalling circumstances, the semblance of guilt; but when, on the other hand, I reflected on the vindictive pitiless character of the Governor, with whom to be suspected was to be convicted, and that the court of justice, with whatever reluctance, would inevitably decree as he might be pleased to dictate, I decided to follow the advice of my friends.

The night passed in the utmost state of solicitude and apprehension, for such was the vigilance of the police that escape was rendered impossible; the premises were completely circumvallated by thief-takers in every variety of disguise, so that I was hermetically sealed. The following day was passed much in the same way, till at length a plan was concerted which bade fair to be attended with success.

It was ascertained that a search-warrant would, to a certainty be issued on the Monday morning, so that no time was to be lost. Accordingly, on Sunday evening a little before gun-fire, Mrs. Burnett, disguised as a Malay slave, came to the house through a whole phalanx of the police, carrying in her

hand a large lanthorn, according to the Cape custom, and conducting a gentleman and lady. I lost not a moment in assuming her disguise, and boldly sallied forth, re-conducting the same lady and gentleman into the town. So admirably was this plan concerted, that not the slightest suspicion was entertained by any of the officers, all of whom saw me depart, and some of whom passed within a few yards of my person. In short I made my escape, got safe to the house of one merchant, where I put on a fresh disguise, and finally arrived at the house of another, where a place of effectual concealment had been provided for me.

The most active exertions were now made to discover me. His Excellency was said to have offered a private reward of four thousand dollars; the coast was guarded to prevent my embarkation, and the masters of such vessels as were about sailing were interdicted, under a very heavy penalty, from receiving me on board; the police, in the meantime, were exploring every part of the town and suburbs, and were harassed, night as well as day, in their toilsome but fruitless search.

I had been a fortnight confined in a room not ten feet square, inaccessible to a breath of wind, where the thermometer ranged from 90 to 105, when in a total loss of appetite and an alarming prostration of strength, I had reason to apprehend the very speedy consummation of his Excellency's wishes without the formality of trial, and I determined to shift my dwelling to a situation a little more salubrious; under proper precautions, I therefore resumed my former abode in the suburbs.

In the meantime preparations were making to smuggle me away. The threatened penalty to the captains was at no time an impediment, as several merchants offered to become their security to any amount, and such was the general sympathy in my favour, that some masters of vessels declared their determination to receive me, if I was prepared, at their own sole risk. My friends had also circulated a report that I had sailed in the York, which, from the relaxed exertions of the police, seemed to have obtained some faith with the Government.

It is here necessary to observe, that in spite of the ridicule of my friends and a concurrent opinion to the contrary, I could not divest myself of a belief that the fiscal was not only anxious for, but had actually been instrumental to my escape, and this

belief, in the end, has received complete confirmation. Actuated, however, by it, and a report that Sir John Truter set his face against these proceedings of his Lordship, I commissioned Mrs. Burnett to see both these gentlemen, and in a private and confidential interview to ascertain, if possible, from them what was to be the upshot of these violent measures. From Sir John Truter she learnt that I had nothing further to apprehend in any proceedings of the bench of justice, as it had rejected the fiscal's application for the institution of a criminal prosecution against me, founded upon the recent suspicions of his Excellency; he informed her that whenever I was prepared to sail, on her making application to the fiscal, that officer would give her a passport to justify the captain of the vessel in taking me from the colony; but he recommended that till the very moment of embarkation I should on no account quit my concealment. To Mr. Denyssen I wrote a confidential letter, introductory of Mrs. Burnett, and the nature of the business which occasioned her to call upon him. This gentleman gave her similar assurances with Sir John Truter, and as strenuously recommended that I should persevere in secreting myself as long as I continued in the colony. The idea of meeting with sympathy and even protection from such authorities, in direct opposition to the fell determinations of his Excellency, was extremely flattering and consolatory, as it tacitly admitted that I was regarded by the highest functionaries of his Government less as a turbulent radical (as his Lordship had been pleased to call me, and for which I shall have an opportunity some day of thanking him in person,) than an aggrieved and persecuted individual whom it was meritorious to rescue from his vengeance.

I had been in this state of hide and seek for nearly a month, when the attention of the police was again directed to the place of my concealment, and positive information was sent me that a plot, dreadful in its character, was then getting up by one of the police officers, under the tutelage of Oliver the spy. This man had formerly been servant to Mr. Edwards, and was the person suborned to accuse his master of having composed the placard which occasioned the first seizure of my papers. This ineffable miscreant, whom I had never seen or spoken to in my life, professed to be in correspondence with me, and was imprisoned upon this confession. I began now to think in good

any intimation of the proceedings to me: the very basis of it I am yet unacquainted with, and it is only from the information of some of the witnesses examined, that I can conjecture what it means. From them I learn that fraud is to be deduced from every transaction I have been engaged in of sale, purchase, or barter, for the last nineteen months. What a preposterous doctrine is this; and what an awful dilemma to be placed in by the laws! I have myself and family to support from (it should be inferred) the fruits of my industry and expenditure; the act of a public functionary is arbitrarily to suspend my pursuits for nineteen months; no entreaty, no remonstrance, can urge him to decision. When I had everything at stake, he rejects a proposition for arrangement; which, after the total ruin of my credit, he eagerly solicits, on finding that he had egregiously committed himself, and could not recede without disgrace. I must not, without hazarding a prosecution for fraud, sell the produce of my land, or purchase the necessaries of life! nay, if I derive funds from another country, which I expend in improvements of my estate, or the support of my family, I am equally liable to this degrading imputation! This is to continue for nineteen months, and if the pleasure of the sequestrator so wills it, for nineteen years, tormented in the interim by creditors from whom the sequestrator withholds their due; when, on becoming obnoxious to the Government, this terrible charge is to be established by a miscreant, who would stick at nothing to court its favour; and I, in addition to all this misery, am to have my prospects in life blasted, and my name consigned to infamy! This, gentlemen, is no hypothetical case; it is a very faint outline of what I have been, and am now undergoing, and I am thoroughly convinced that, but for your presence in the colony, this iniquitous plot, which has been concocting for the last nineteen months to ensnare me, would now develope itself to the full extent of that mischief I claim your immediate interposition to frustrate.

"If I encountered this persecution as a person hostile to, and thwarting the measures of Government, a conduct I am told attributed to me, I possibly might have less grounds of complaint; but, so far from this being the case, I have avoided every thing like party or politics during my abode in the colony: my battle has been entirely my own, and my complaints not sinister and covert, but direct and avowed; and, I appeal

to you, gentlemen, if any vituperative communications have been made by me against the Government to your Commission, or any, but upon a point involving, in my opinion, the security both of property and life in this district. I belong to a family as much distinguished for their loyalty as for their opulence and respectability; I never gave a political opinion in my life, and if I now arraign the measures of a Government which has so infamously persecuted me, it is the retalliation of the worm when trodden upon.

As I am firmly persuaded the hearing of my appeal in Cape Town will be contrived to fall at a period when you, gentlemen, are absent from it, and as I am fully resolved to suffer judgment by default, rather than hazard a chance of omitting to disclose my grievances in person, may I take the liberty of inquiring whether I shall be able to reach Cape Town, overland, before the period of your quitting it, otherwise I must intreat your interposition with the Government to postpone the trials in which I am appellant, as well as the one referred, until your departure from the frontier.

I hope I may be acquitted of importunity in the urgent tenor of this letter, as well as of intemperance in the language I have felt myself compelled to use: I should compromise every just feeling that became me, if I spoke in equivocal terms, or less explicitly than I have done, upon so barefaced a violation of the very decencies of justice. The tone of current opinion upon this trial is, that when the wishes of the Government are supposed to be a consideration, the laws are unhesitatingly perverted to its caprice, and the forms of rendering them become a mere burlesque.

In this afflicting condition, just upon the heels of a calamity which has left my family houseless, and swept from them the last vestiges of our little property, I look with steady confidence to the high integrity of your calling, gentlemen, for protection and redress. I ask nothing but what you may well concede—a patient investigation of the case I have done myself the honour to lay before you, and the adoption of such measures as its merits may prescribe, above all, that my fate with this Government may be determined before you quit the colony, under the immoveable conviction I feel that my life will otherwise be sacrificed to its persecution.

I have requested the secretary to transcribe all the proceedings for the purpose of laying them before you, and I have various other documents to present in person. The Trial I shall lose no time in publishing, with a commentary, of such authenticity that it will be impossible for two opinions to prevail thenceforth upon the subject. I shall immediately forward the copy, with a memoir of my grievances to a Member of the House of Commons, accompanied with the whole of my correspondence with the Colonial Government, and another I shall transmit to the Secretary of State for the Colonies.

I have the honour to be, Gentlemen,
Your very obedient humble servant,
B. BURNETT.

SIR, Knysna, December 12, 1823.

We have the honour to acknowledge the receipt of your letter of the 25th ult., it having followed us from Cape Town, and reached us at this place on the 10th inst.

Without entering into a detailed consideration of the grounds of litigation between yourself and Mr. Hart, or of the decision of the Judges of Circuit, of which you so much complain, we wish to correct an opinion that you seem to have formed of the nature and extent of the powers under which we act, and thereby to leave it entirely to your option to await our arrival at Graham's Town, or to proceed to Cape Town, where your interests, in the event of the appeal you have entered against the decision of the Court of Circuit, would seem to require your presence. With the information before us that you have already transmitted, and with such other documents as you express your intention to procure, or that we ourselves may obtain at Graham's Town, we shall probably find it our duty to enter upon an examination of your complaint; not with a view to obtain redress for either one or other of the parties, who may seem entitled to it, (for that would be a virtual supercession of the legal authorities that have already pronounced sentence,) but to enable us to submit such an opinion to his Majesty's Government, as, in the event of the necessity appearing, may enable them to determine upon making any future change, either in the judicial administration or in the existing laws of the colony.

To enable you to calculate the probable period of our arrival

at Graham's Town, we beg to inform you, that we are now on our road to Uitenhage, where we shall in all probability not arrive until the 20th inst. Our stay at Uitenhage will depend upon the business that may occupy us, and it is our intention to proceed from thence to Graaf Reinet, and to return towards the coast by Graham's Town, where it is not likely we shall arrive before the 15th of January 1824.

We have the honour to be, Sir,
Your most obedient servants,
JOHN THOMAS BIGGE.
WM. M. G. COLEBROOKE.

Bishop Burnett, Esq.
Graham's Town.

It will be seen, from the foregoing letter, that the commissioners *did* undertake an inquiry into my grievances, not so late as 1824, as asserted by them, but in 1823; and if the case of any individual in the colony demanded investigation, it will not, I presume, be denied that mine was that case. My complaints to Earl Bathurst were of a character impossible to be overlooked; and both as confirming or repelling heavy charges of oppression, and illustrating the state of judicial procedure in the colony, putting the inference of Mr. Horton, or their own tacit assurance, out of the question, it was one on which it became their imperative duty to deliberate and report.

Having, I think, established both the necessity and the virtual promise of inquiry, I shall now show how these gentlemen proceeded. Anxious to lose no time in laying my case fully before them, I repaired to Uitenhage, a distance of one hundred miles from Graham's Town, where they had then arrived. In a very long interview with Major Colebrooke, I illustrated my letter to Lord Bathurst, and, after giving him a general outline of the grievances I laboured

under, and depositing my documents, took my leave. Having abandoned their intention of proceeding first to Graaf Reinet, they arrived in Graham's Town on the 4th of February, when I lost no time in renewing my application, and importuned them very earnestly to commence forthwith the investigation of my case. I had been summoned for personal appearance at Cape Town, so far back as the 29th of the preceding December, and it had cost me some pains to get the trial postponed for two months—a delay solicited solely for the purpose of being present at the examination of the commissioners. I gave them a long list of witnesses in my behalf, and forcibly represented the necessity of my being on the spot during the period of the scrutiny, as it was impossible for them to conduct it with any thing like justice to myself if absent; still, peculiar as my situation was, and suspicious as were the appearances of this procrastination, they declined entering upon the investigation while I was on the frontier, which I did not quit till the month of April; and they actually sent away a witness without interrogation, whom, at my pressing instance, they had consented to examine but the day before. This witness had acted as overseer upon the farm, was intimately acquainted with all its conduct, the number of people I had employed, the true statement of the grass and forage cases, the aggressions of the Cape Corps, and was at the time only delaying a long journey into the interior, from the daily expectation of being examined.

The commissioners can establish no excuse for this delay, so injurious in its consequences to me, in the discovery of any neglect or omission on my part "to

avail myself of those modes of obtaining redress that the laws of the colony afforded," their own illustration of the Report proves otherwise, for it exhibits one continued struggle with the power attempting to overwhelm me; nor do they advance any charge of the kind, except in the instance of my neglecting to pursue the appeals against the decisions of the Court of Circuit in Graham's Town. This imputation is one of the first instances I shall have to notice of these gentlemen's partiality, because, if it was even the fact, so many causes were in operation to render my proceeding with the appeals impossible, that none but persons blinded by partiality would have overlooked them. In the first place, I was utterly ignorant of the law upon that head; and it is only in the Report itself I learn, for the first time, that the appellant to a higher tribunal is restricted to twelve weeks. I was then seven hundred miles from Cape Town, lingering to the last moment in the hope the commissioners would enter upon my case: a criminal prosecution was hanging over my head, which absorbed every energy of my mind, and occupied my time wholly; added to which, my pecuniary condition was far from adequate to the successful conduct of such complicated and important causes. These considerations alone would make the imputation of negligence, on my part, as invidious as it is unmerited; but when I prove that the cause of delay originated not in me, but in the court of justice itself, the Commissioners of Inquiry will deserve a harsher censure.

By a fundamental law of the colony, all suitors are entitled to copies of the causes in which they have

been engaged; and it must be evident that no appeal could, by any possibility, be carried on without possession of copies of the proceedings in the lower court. These copies I formally applied for to the secretary, the moment the court had closed its sittings, but without success, and every practicable mode of obtaining them which could suggest itself I subsequently put in practice. The Commissioners of Inquiry had procured them from Cape Town, but these gentlemen refused to let me transcribe or even see them; and as the following letters will clearly prove that I relaxed in no effort to obtain them, can any thing be more invidiously partial or unjust than the assertion that I forfeited my right to appeal through my own neglect; while it is here manifest that, however I might have been prepared in other respects, the negligence or the injustice of the court would alone have prevented the prosecution of the appeals?

No. 1.—D. F. Bennangé, Esq.

SIR, Graham's Town, March 23, 1824.

Exclusive of my application to the commissioners on their recent circuit, I have twice applied to the proper authority for English copies of all the proceedings in the various causes at issue between Robert Hart and myself before those personages, without so much as receiving any acknowledgment of my requests.

To these documents I am entitled by the laws of the colony; and these laws are already violated by the procrastination I complain of. In this instance I am wholly out of the power or control of the sequestrator, unless his extraordinary functions extend (by no uncommon obliquity here) to a right of withholding from me papers so essential to my defence in the pending prosecution against me for libel at the suit of the fiscal.

I beg leave now, Sir, to acquaint you, formally, that without

timely possession of the documents in question, it will be quite impossible for me to enter upon my trial; and that I shall take becoming measures upon this occasion, unless they are ready for delivery, through the medium of the sequestrator, forthwith upon my arrival in Cape Town.

I am, Sir, your very obedient servant,

(Signed) B. BURNETT.

(A true copy) D. F. BENNANGE, Sec.

No. 2.—D. F. Bennangé, Esq., &c. &c. &c.

SIR, Cape Town, 5th May, 1824.

I again ask you for copies of the proceedings had before the last commission of circuit at Graham's Town, making my fifth application upon the subject.

I beg now to inform you, that over and above the illegality of withholding documents to which I am by law entitled, I cannot proceed in my defence in the pending action for libel without them, and that I shall make this neglect my first exception.

I am, Sir, your obedient servant,

(Signed) B. BURNETT.

(A true copy) D. F. BENNANGE, Sec.

(Translation.) No. 3.

Extract Resolution passed by his Honour the Chief Justice and the Members of the worshipful the Court of Justice of the Cape of Good Hope, and the dependencies thereof, on Thursday the 6th May, 1824.

The secretary exhibits a letter dated yesterday, signed Bishop Burnett, and addressed to him, which he has received from the messenger during the present sitting of the court, stating that he, Burnett, now again requests copies of the proceedings carried on before the last commission of circuit at Graham's Town, and that this is the fifth application he has made to the same effect; that, over and above the illegality of withholding documents from him to which he is entitled by law, he is not able, without them, to make his defence in an action for libel now pending against him, and that this neglect, in not furnishing him with those documents, will constitute his first exception. Said letter being of the following tenor:—(Vide No. 2, above.)

F. I.

The secretary also states, that on the 2d April last he received another letter from said B. Burnett, dated Graham's Town the 23d March last, containing, among other matters, that he, Burnett, besides an application which he made to the last commission of circuit, had addressed himself, two different times, to the proper authorities for English copies of all the proceedings carried on before those personages in the various causes between him and Robert Hart, without having received even an answer; that he officially informs him, the secretary, that it is totally impossible for him to be prepared for his trial, unless he be put in timely possession of those documents; and that he intends, on that occasion, to take becoming measures in case they be not in readiness to be delivered to him, through the sequestrator, immediately on his arrival in town, which letter is likewise exhibited by the secretary, and is of the following tenor :---(Vide No. 1, p. 55.)

F. I.

The secretary hereupon further states, that he had already prepared a great part of his answer to said letter, in order to be forwarded per post on the 2d April last, when he was informed, through the channel of the fiscal's office, that B. Burnett was on his way hither in the *Locust*, for which reason he had kept back his answer. That the tenor of his said answer partly was to inform Burnett, that he, the secretary, did not know of any other application than of one which was communicated to him a considerable time ago by the head clerk, who acted as secretary to the commission of circuit, and who said that he had referred Burnett to the records and documents deposited in the secretary's office at Graham's Town; and that this application only being made to him, he could cause copies of all the proceedings which had been carried on to be prepared at Mr. Burnett's expense, but that it was not in his power to furnish him with translations in the English langage. That he, the secretary, had expected that Burnett would have personally applied to him on his coming to town, when he intended to have acquainted him with the above-mentioned circumstances, and to have desired to know whether any application had been made by him at Graham's Town for the papers he required, and if he then, and on what grounds, met with any refusal, and also to have required from him a spe-

cific statement of such documents from the records of the commission of circuit, as he might deem necessary for his defence; but that no other application being made to him than the one by letter received this day, he, the secretary, requests the court's directions how he is to act in this case.

Having read and examined the two letters exhibited, and deliberated thereon, resolved to acquiesce in the communication of the court's secretary, and the same is hereby acquiesced in accordingly, with authority to him to cause to be prepared and delivered to B. Burnett, at his expense, copies in the Dutch or in the English language, so far as there may be any in English, of all such documents and extracts from the records of the commission of circuit held before them at their sitting at Graham's Town, as he shall desire for his defence and specifically require; and in case that he, B. Burnett, may be unable to bear the expense of procuring the same, he shall then be obliged, previously to the said copies or extracts being prepared, to address the court, requesting that he may be furnished with them *pro Deo;* on which such disposition will be given as the court shall deem meet.

An extract hereof, without resumption, to be granted to B. Burnett, for his information and guidance.

(A true extract) (signed) D. F. BENNANGE, Sec.
(A true translation) HY. MURPHY, Sworn Trans.
(A true translated copy.) D. F. BENNANGE, Sec.

As the second, third, and fourth paragraphs of the Report are mere texts which are subsequently explained, I shall pass them over with only one or two remarks. The Commissioners state, that it is "upon later and more public occasions I have denounced certain other practices in the commissariat department, deduced from its connection with the establishment called the 'Somerset Farm.'" This is a misstatement in both respects; first, as far back as their sojourn at Uitenhage, I denounced the Somerset Farm to them in person, as a fruitful source of *possible* peculation, going so far as to say, that good

calculators made the balance of surplus profit, within the preceding four years, little short of *two hundred thousand pounds!* and that neither I nor my informers could ascertain, by any toil of research, to what purposes this enormous sum had been applied. Secondly, I have denounced no practices in the commissariat department: on the contrary, that department has invariably suffered from the cupidity of the Somerset Farm; and my aim, in all I have written upon the subject, has been to establish this fact. With respect to Lord Charles Somerset's influence upon the exchanges, as it will be discussed under its proper head, I shall content myself with no further advertence to it in this place, than by calling the public attention to the curious coincidence, that after my complaints are recorded with his Majesty's Ministers, the evil of the system of drawing by the commissariat "is removed by the *enforcement* of the regulations issued by the Lords Commisssioners of the Treasury," and the "Somerset Farm is *done away.*"

Par. 5.—'We do not consider it necessary to take any particular notice in this place of the complaint that was made by Mr. Burnett of the refusal of the Local Government to include him in the general issue of rations, provided for those settlers who had emigrated under the guarantee of pecuniary deposits, which were to be reimbursed to them on the fulfilment of certain conditions. Mr. Burnett had withdrawn himself, before he left England, from the engagements into which they had entered, and arrived at the Cape with an entire freedom of choice as to pursuits or destination, with a claim upon Government, in consequence of your Lordship's recommendation, for a grant of land proportionate to the means that he brought, or should be able to prove that he brought with him for its cultiva-

tion. Several memorials from him upon these subjects are recorded in the office of the chief secretary to this Government, and couched in vehement and frequently offensive language; but we find, that at a subsequent period, Mr. Burnett partook of the issue of rations, by order of the magistrate at Graham's Town, to the amount of 720 rix-dollars, for which he still is indebted to the Government. He proceeded to the district of Albany, after having received information that the lands at the river Knysna, upon which he was desirous of settling, were not in the disposal of Government, early in the year 1820. He took a lease of a farm named 'Doorn Valley,' advantageously situated in the immediate vicinity of Graham's Town; and in consequence of an application to the acting Governor, Sir Rufane Donkin, he received a grant of land adjoining this farm. Although our inquiries respecting the means and resources brought into the colony by Mr. Burnett have not been of a direct nature, we are led to conclude that they were very limited, and chiefly, if not entirely, consisted of the credit that he might possess in England, in consequence of his relationship to some of the members of a respectable mercantile house near London.'

This insidious paragraph embraces many points, and will be best replied to by a succinct narrative of facts as they arose. Mr. Vansittart's speech in Parliament, proposing a grant for the encouragement of emigration, attracted my attention to the subject, and I commissioned a friend to make inquiries into the proper mode of proceeding by those who felt inclined to embrace the offer of Government. He represented that nothing more was required than the insertion of my name in one of those lists of parties, having a nominal head, to be submitted to the approval of the Colonial Department. Mr. Bailey's was the one he recommended, and my name was placed on the list. On looking farther into the mat-

ter, I discovered that these heads of parties assumed a degree of dictation and control not at all consonant with my ideas on the subject; and I, accordingly, with a view to derive information from the best source, obtained an introduction, through Sir Benjamin Bloomfield, to Mr. Goulburn. This gentleman gave me a clear insight into the nature of the undertaking I was about embarking in, and strongly recommended my proceeding to the Cape untrammelled by any association of the kind, with an assurance that, if I did not burthen the Government with the expense of a party, I should receive *more encouragement* from the authorities in the colony than the ordinary settler; and offering also a free passage for myself and family in any one of the transports taken up. While this affair was pending, Mr. Bailey, to whom I had written requiring some information, sent me a very offensive letter, which I answered with so strong a rebuke, that he erased my name from his list, and returned me the deposit money. In the end, I adopted Mr. Goulburn's suggestion, and took my passage in the *Ocean* transport, for which I paid the captain, declining to avail myself of the free passage which had been ordered.

It is here manifest, that the course I pursued was in obedience to the kind advice of the functionary deputed to conduct the emigration; and that, if any secession from an engagement in this country took place, it was the direct act of the leader with whom I had contemplated a connection, and not mine; yet even this trifling circumstance is not only distorted from the fact, by the Commissioners of Inquiry, but

made a pretext to justify the subsequent injustice of the Colonial Government.

On the passage to the Cape, considerable distress prevailed on board from the ill adaptation of the provisions to the taste and palates of the people so little accustomed to them. At both the Canary and Cape de Verd islands I purchased wines, fresh provisions, vegetables, and fruits, to the amount of a hundred and ten pounds, a considerable portion of which was distributed among the settlers. Some families scarcely ever tasted salt food for the last two months of the passage; and, I believe, not a mother can be found of the *Ocean's* party, but who would cheerfully confess that she owed the lives of her children to my humanity during the voyage. I should not advert to a circumstance so trivial, and apparently unconnected with the Report, but that an anecdote it occasioned will strikingly illustrate the appalling influence of the Colonial Government over the minds of the colonists, and the estimation in which it was supposed to hold me by the settlers in Albany. When the publication of my supposed insolvency appeared, I took measures, prior to the suspension of the sale, for a final departure from the district, and received expressions of the deepest regret, on the occasion, from the *Ocean's* party of settlers, and the labourers I had employed. Amongst other little tributes of gratitude, it was supposed by the former, that their testimonials of my humanity on the passage would be the most acceptable; and at a meeting of some of the party, an address of this kind was formally proposed. The reader will hardly conjec-

ture the issue: it was declared by the majority that they were ready to assure me personally of the deep sense they entertained of my kindness to them on the passage, but there was so much to be apprehended in that colony from *putting the name to paper*, that they declined acceding to the proposition!

On my arrival at the Cape, I took an early opportunity of waiting upon Sir Rufane Donkin, the acting Governor, and presented to him my letter from Mr. Goulburn. This, to my great astonishment, proved no other than the customary credential brought out by every head of a party, and not that special instruction in my favour which I had been led to suppose it contained, from the nature of my introduction to Mr. Goulburn, his personal assurances, and, may I be permitted to add, not the weakest pretensions in life on my own part. The paucity of this introduction led to the projection of some obstacles on the part of the Colonial Government to the fulfilment of my wishes; but, after a little negociation, these were removed, and I repaired to Graham's Town to await the arrival of the Governor.

Prior to this event, I had an opportunity of ascertaining that a spot of land, recently granted to one Robert Hart, formerly a serjeant of the Cape Corps, was to be let, and that its contiguity to the Barracks made it a desirable possession for the cultivation of green forage. This farm I, accordingly, hired upon lease for six years, under the safeguard of a clause entitling me to purchase it, during any part of that period, for a stipulated sum; and when Sir Rufane Donkin arrived at Graham's Town, he granted me

all the adjoining land to the first location of the settlers.

I must here observe, that the grant of this land formed the ground-work of all Mr. Hart's animosity; it was a possession he had long set his mind upon acquiring, and his application for it to the Governor, following within one hour of its donation to me, rendered his disappointment particularly galling and severe. In repelling the infamous attacks upon me in the Report of the Commissioners, it is my earnest desire to refrain from all personalities, or the manifestation of a corresponding vindictiveness of feeling; but, at the same time, I should hold myself highly culpable in withholding any circumstances illustrative of the character of the hostility towards me. Mr. Hart's reputation on the frontier was that of a shrewd penetrating man, of inscrutable cunning, with every energy of his soul absorbed by the lust of money, not devoid of generosity, but implacably revengeful in his resentments; and it was observed to me, by his own relations, that this unfortunate affair of the grant had already sown those seeds of hatred which it would be wise in me to arm against in time. Another untoward occurrence very soon after happening, that exacerbation was produced which Mr. Hart's conduct displayed, without the least abatement, during the remainder of my abode in the colony.

The late Captain Ellert, of the Cape Corps, had occasionally called at the house where I resided in Graham's Town, and gave me a pressing invitation, in the event of my going to Uitenhage, to take up my abode at his house. Some time after, on my re-

turn from Algoa Bay, I availed myself of his offer, and became his guest. Although in the possession of considerable property, his affairs were at this time embarrassed, and he represented to me so forcibly, how essential to the preservation of his credit was the advance of a few thousand dollars, that I yielded to his request of becoming security to Mr. Hart for that amount, which, under this guarantee, the latter had consented to lend him. I, therefore, left a letter with Captain Ellert to that effect, who gave me, at the time, his most solemn assurance, that if any unforeseen event should expose me to an application from Hart, he would give me landed security forthwith for the amount of my liability. That I acted incautiously is evident; but too much frankness of disposition, and too little suspicion of the integrity of others, have proved my bane through life. Some few weeks after this transaction, I received the following letter from Mr. Hart:

DEAR SIR, Somerset, September 25, 1820.

When I was at Uitenhage, I wase necessiated to pay the sume of rds 5000, for which I had passed my note of hand to Captain Ellert, and for which you had given him a letter to me, offring your becoming securetey to me for that sume in case I would advance it; this letter I have taken upe from Captain Ellert, and, of course, you by it becom securety to me for this money, as it is now paid. I am sorry to see that his afairs are in so bad a way, though there is sill a faint hope of his getting over it; there is only one chance for it, and that is precareous in a high degree; but keep this to yourself, as giving it publicity would only injur him further.

I spock to him, begging he would send your furniture, withe the remainder of the waggon loaded withe barley, but he sayes there is no such thing to be got, but he will loos no oppertunitey of foward the artical you left with him. I am sorrey to be under the necessty of sending your bell at this time, which I

would not do was I not compeled from the large advanced I have been compeled to make for others; if you can be pleased to settle it, I beleave it is correct. Yours truly,

ROB. HART.

R. Burnett, Esq. Dr. to R. Hart.

| | RDs. |
|---|---|
| 2 spans of oxen, 10 each, at 300 rds..... | 600 |
| 2 slaughter oxen, at 30 each..... | 60 |
| 50 sheepe, at 30 rds each..... | 150 |
| 9 muds of barly, from Mr. Johnston ..... | 95 |
| | RDs. 905 |

B. Burnett, Esq.
&c. &c. &c. Graham's Town.

On receipt of this letter, I wrote to Captain Ellert acquainting him with its contents, and reminding him of his promised security, to which I received no answer; but, in the mean time, a gentleman in Graham's Town, who had heard of the affair, gave me such information as to leave no doubt in my mind that it was a concerted plan between Hart and Ellert to pay off five thousand dollars of the latter's debt out of my pocket. Under this impression, I thought it most advisable to consult with Lieutenant-Colonel (then Captain) Somerset, in his capacity of landdrost, as to the measures I should adopt; I accordingly communicated the facts as stated, and received the following:

SIR, Graham's Town, October 1, 1820.

In answer to your question, this morning, on Captain Ellert's business, I beg leave to inform you, that Mr. Hart can have no claim on you, until it has been perfectly ascertained, whether or nor Captain Ellert's whole estate, or any part of it, can answer Mr. Hart's demand. I would, therefore, strongly recommend, that you inform Mr. Stædel, without loss of time, of the whole transaction (Captain Ellert's estate having been, for

some time, in arrest, and, consequently, under the management of the secretary at Uitenhage); requesting Mr. Stædel to inform you, whether Captain Ellert's property can answer the demand of Mr. Hart for 5000 rds, requesting Mr. Stædel to distress the estate for the same.

If Mr. Ellert's property can pay any part of the demand, you will then only have to pay the balance.

Mr. Hart must know, that Captain Ellert's estate has been insolvent these six months. I have the honour to be, Sir,

Your obedient servant,

HENRY SOMERSET,

Magistrate for Graham's Town and Albany.

To B. Burnett, Esq.

I had, in the mean time, written to Hart, stating my view of the transaction, and exhorting him to exhaust every means of recovery against Ellert's estates before he renewed his application to me. I received this answer:

DEAR SIR, Somerset Farme, 24 October, 1820, 3 o'clock, A. M.

I have just receved yours of the 18, relative to the afair of Captain Ellert, which is exactly as followes : viz.

Captain Ellert came to this place, and beged I would become good for rds 5000, payable at six weeks after that period, offering me a letter from you, wherein you offur to become securety for him, in case I should advancee this sume for him; he also offered me as securety three peces of land, situated in the neighbourhood of Uitenhage, the latter I accepted as security, in the mean time, for my note of hand, (which I then gave him, payable six weeks after date,) as he asured me, that neether you nor I should be called upon for the money, as he would, by sales he was about to effect, pay it himselfe.

When I was at Uitenhage, about the 20th of last month, I inquired what had been done respecting the payment of this sum, when, to my no small astonishment, I found that my note of hand had been paid away as part of his debet, (i. e. to pay in part purchesses made by his familey at his own sale,) and that I was called upon to pay the amaunt of my note of hand, which I discharged; I also found that the places or peces of

land, Captain Ellert had sold to me, as securety for my note of hand, were at the time he endeavoured to effecet the sale, were then actualy under sequesteration, and, consequently, not at his disposale. Finding this the case, I, of course, felt hurt, and called upon him for securety for the sume of five thousand rds, which I had to pay, when he again produced your letter addressed to me, and which I accepted; this is the only securety I have ever been offered or accepted; if he has given you any other information than this, *it is false;* hawever, to make the best of it, I have still in my passession the agreement regarding the sale of the 3 peces of land, and mad arrangements for theer being transfaird to me, as soon as they were given upe by the sequesterator, if this transfair could be effected, we will boathe be secure, at least, of any matereal lose. Captain Ellert told me, that stepes had been taken by his frends in Cape Town to arrange maters with the sequesterator, and I instantly wrote my agent to asertain when this arrangement took plaice, and to inform me. I have by this post receved a letter from him, withe the copy of one from the sequesterators office, shewing that the arrangement is not yet made, but, probably, will take place soon. Colonel Cuyler, through whos hands the whol business goes, is watching for me, and will have the transfair effected the moment it can be done, as there is an other sentence for Vanden debets about to be put into execution, which, I understand, will have the prefairance in case the transfair has not taken place.

I remain, dear Sir, yours truly,

ROB. HART.

B. Burnett, Esq.
&c. &c. &c. Graham's Town.

This precious epistle, so confirmatory of what had been suggested, gave me a full insight into the whole scheme, which I resolved forthwith to frustrate, by adopting Captain Somerset's advice, and consulting the District Secretary. I accordingly sent him every particular, with a power of attorney to act in my behalf; and the two following letters will abundantly show his sense of the transaction:

SIR, Uitenhage, November 8, 1820.

I received yours of the 31st ult., with the power of attorney and letter of Mr. Hart. I feel extremely sorry that it is not in my power to do any thing for you, unless you send me an order, to demand from Ellert, either to refund the security paid to Mr. Hart by you, or to give you a security for the 5000 rds which you are to pay to Mr. Hart.

Not knowing whether you will agree to pay Hart, or whether you will object to it, as Hart had advanced the money upon the places, I must wait until you will have given me further instructions.

The letter of Mr. Hart I certainly shall not give out of my hands. I think it a most precious voucher, and most likely to be the cause of finding out the truth of the matter.

The copy of your agreement I send herewith. As it is a notarial paper of my own, Mr. Onkruydt could not find it in his office.

Believe me, Sir, your obedient servant,

F. H. STÆDEL.

Mr. B. Burnett,
Graham's Town.

SIR, Uitenhage, December 7, 1820.

I received yours of 3rd instant, and hereby enclose you the official or original letter of Mr. Hart, which I must advise you never to part with, rather send a certified copy of it, if you wish to make use of it.

I readily agree that the course you are now determined to adopt is the best; but I advise you to consult Mr. J. P. de Wet, at the Cape, on the subject, what step you should take. A power of attorney to act in your behalf would be a trifling expense in comparison to the 5000 rix-dollars which might possibly come upon you to pay for a swindler. I have therefore not called upon Captain Ellert, who is in a very precarious state of health. As the letter I send you is of much consequence to me also, I hope you will not refuse me a copy of it. I have not presumed to take it yet without your consent.

Believe me, my dear Sir, your's truly.

F. H. STÆDEL.

B. Burnett, Esq.
Graham's Town.

The reader will not fail to develope the complexion of this transaction, for its whole mechanism is, fortunately, too clumsy to escape the slightest penetration; and yet this is the man through whose hands hundreds of thousands of the public money have been for years passing, without any other audit or control, than that of one as deeply interested in keeping the affairs of the Somerset establishment involved in mystery and irresponsibility; and who, in concert with a shopkeeper and two members of the court of justice, have pandered to Lord Charles Somerset's vengeance, by the promulgation of the detestable lie that I had acted fraudulently to my creditors. The crelation of this occurrence will not be considered an unnecessary digression in the end, for Mr. Hart's persecution is so mainly productive of, and so intimately blended with my sufferings in the colony, that it is important to disclose all the remote causes by which he has been actuated.

In extenuating the injustice of the Colonial Authorities, or rather in justifying their partial distribution of rations, the issue of which, it must be remarked, was a contingent measure, not at all contemplated by the home Government, the commissioners dwell a good deal upon the supposed exclusive eligibility of those to this indulgence "who had emigrated under the guarantee of pecuniary deposits." In the terrible task imposed upon these gentlemen of vindicating the government of Lord Charles Somerset, and carrying him safe over the ordeal awaiting him, it may be imagined that no opportunity will be slighted of inculpating my conduct, and establishing the vexation and the frivolity of my complaints. That the Report

exhibits this determination is manifest to every one, and in this respect has done me "yeoman's service"; for it breathes nothing else throughout but a wily research into trifles that may, by perversion and distortion, be arrayed against me, while it passes over any, the slightest, mention of one solitary circumstance in my favour. If Mr. Bigge thought he could immolate me by his Report, without one struggle, he has, indeed, miscalculated my strength; for, debarred, as I am by Lord Bathurst's injustice, from access to evidence at the Cape, I have still the means of giving the public such a dissection of this Report, that not two opinions shall exist upon its merits.

This "pecuniary guarantee" was the deposit with the Government of ten pounds per man by the settlers previous to leaving England, to be repaid by instalments on their arrival at their locations, and was a precaution very wisely adopted to obviate the possibility of that utter destitution in which they might otherwise have been plunged. Sir Rufane Donkin, who was Governor at the time of their arrival, and who, it must be allowed, displayed the most eager anxiety for their comfort and success, very soon perceived how utterly impossible it would be for such a congregation of helpless people to derive supplies in the wilderness before a return of their industry from any extant resources in the district. He, accordingly, issued orders to supply them with rations, chargeable upon their deposits, and the moment these deposits were absorbed by the issues, it was intimated to the settlers, by public circular, that no more rations would be supplied. Up to this period, which included a space of from four to six months, the ex-

penditure of the deposits fluctuating in proportion to the numbers constituting the different parties, and the quantity of rations drawn, I never applied for them, although the majority of the people in my employ were settlers, many of whose heads of parties were absolutely receiving them for a portion of their number at the very time in my service. It must be, however, borne in mind, that in stating the graduated period of from four to six months, I am quite on the outside; for it graduated rather from the instant of location, as in many instances the heavy expense of overland carriage, seven pounds per ton, for 120 miles, consumed the whole of the deposits.

So many causes now co-operated to convince the Colonial Government of the utter impossibility of discontinuing these supplies, with any regard to the preservation of the emigrants, that the rations were again issued; and *then* it was, when "pecuniary guarantees" had nothing to do with the matter, that, with as unquestionable a title to the beneficence of the Government as any other person, I applied for my quota. While these issues were the mere discharge of a debt, due from the Government to the settlers, of course, I had no pretension to them, for I was not a creditor; but the moment they became the voluntary loan or gift of that Government, from motives of the direst necessity, surely my claims upon its sympathy were not only equal to those of the mass of settlers, but paramount, from the difficulties I had encountered, in having been deprived of assistance so essential, and from my having employed, with the only exception of Major Pigot, more labourers in this interval than any six parties united in the colony.

The public will not fail to perceive the art with which the commissioners generalize on this point. They "do not consider it necessary to take any particular notice."—No, because they knew it would not bear inquiry, and that a full reply to my statement would expose the injustice complained of; they merely dwell on the abstract proposition of no "pecuniary guarantee," no rations; instead of honourably reporting the fact, that when the "pecuniary guarantees" were all consumed, and the subsequent issues for a *whole year* were, what in the end they proved, the donation of humanity, it never could have been the intention of his Majesty's Government to make me the single exception to its beneficence. But if they found the propriety of my exemption on the ridiculous plea, that because I had put the Government to no expense, I had acquired no title to its assistance, why was not the rule enforced equally with all who were similarly circumstanced, and why was Lieutenant Daniels and several others, who, in every one respect, stood precisely in my condition, permitted to have the rations, throughout the whole period of their issue, without objection or difficulty? These facts are unanswerable, however speciously Mr. Bigge may gloss over iniquity and pervert truth.

The announcement by the commissioners of their *discovery*, that in spite of this complaint, I, nevertheless, partook of rations to the extent of 720 rix dollars, has evidently the two-fold object of insinuating a desire on my part to conceal the fact, and to prove the complaint unfounded. The issue in question forms so trifling an exception to the amount

of what, in justice, I should have received, that I might well have passed it over unnoticed in my statement to Earl Bathurst, without any imputation upon my candour; but if the reader will refer to my letter to Mr. Horton, dated August 12, 1823, he will find this passage; "My exclusion from the least participation in this assistance has been throughout so personal and so pointed, as to occasion Captain Somerset (our then chief magistrate) reprehension for having granted me one issue of rations," which at once disproves the insinuation; and, to show the paucity of the amount received, the lowest average of the people employed by me during the period of issue, at the lowest scale of charge to the commissariat, would have consumed rations to the value of 5029 rix-dollars.

These facts, alone, are conclusive of the invidious style in which this Report is got up, without the superaddition of some others, that, if I am not mistaken, will change the complexion of this affair. Appended to the Report is the following exhibit:

877.—Rations of provisions, fuel and candle, issued from the Somerset establishment at Graham's Town, to B. Burnett, from 25th January to 24th April 1821, at 18$\frac{1}{5}$ stivers per ration..... R. 332 4 1$\frac{2}{5}$

803$\frac{17}{8}$.—To Ditto, from 25th April to 24th June 1821, at 23$\frac{1}{6}$ stivers per ration..... 387 5 $\frac{3}{4}$

Certified that the number of rations were duly issued during the period specified.

(Signed) JAMES JONES, Landdrost.

Received the amount from the commissariat.

(Signed) ROB. HART.

(True extract) W. HAYWARD, A. C. Acc.

A. C. G. Rogerson's Cash Account, to the 24th Oct. 1821.
Abst. O. No. 1.

By this it appears that I am charged with five months' supply of rations, and the account seems to carry with it all the imposing aspect of accuracy of calculation and official authenticity, but it is, nevertheless, erroneous, if not a fabrication altogether. In the first place, my establishment *never received either fuel or candles*, consequently there is an overcharge, no matter into whose pocket the surplus has gone. Secondly, there is a palpable mistake of the issues; and, thirdly, I am positive, to a conviction nothing but the sight of my own signature can remove, that I never received but two months' issue of rations. Unfortunately, in the flood which destroyed my house, a mass of papers were swept away; but, I trust, I have sufficient left to defeat the purpose of this Report. The following two will, at least, show that the issues were not for three or two months as stated, but for one, and the first issue is antedated upwards of three weeks.

DEAR SIR, Thursday Morning.

Inclosed is the form, in which it is only necessary for you to fill up with figures, as regards the number of men, &c. The Magistrate signs below the figures, and the receipt is given below his signature.

I have seen Johnson the Commissary, he expressed some doubt as to your eligibility for receiving rations. Captain Somerset has informed me they will be delivered upon having his signature. You have only to send the Return properly filled up, and get him to sign, and present it at the store for the demand. One month is the period for which rations may be drawn.

If you have not sold your cattle, there is a sale again on Saturday. I have been from home, which prevented me getting this done for you. I hope to get some RD to day. If I succeed I will send to you. Faithfully yours,

J. GOODWIN.

To B. Burnett, Esq.

Return of provisions required by Mr. Burnett's party of settlers from the 17th of February to the 17th of March 1821.

| No. of men. | No. of women. | No. of children. | No. of rations per day | Total No. of rations. |
|---|---|---|---|---|
| 12 | 4⅔ | 3½ | 19 | 532 |

H. SOMERSET, Landdrost.

I leave it to the Commissioners of Inquiry, and Messrs. Johnstone, Jones, Hart, and Hayward, to reconcile this little discrepancy, contenting myself only with this expression of my belief, that if the issues of rations were monthly, as I received but two issues, so am I indebted but for two months' rations; and even this responsibility is but nominal; for as they were drawn for that description of settlers entitled to them in the eye of Government, the heads of those settlers' parties are responsible for the payment.

The concluding remarks of the commissioners, as to the nature of my means and resources, it is scarcely incumbent upon me to notice, unless it would be to point out their presumption in speculating at all in the matter. The respectable house alluded to, which happens not to be mercantile, and to *all* the members of which I happen to have equal affinity, might, with as much propriety, be subjected to the inquisitorial functions of Messrs. Bigge and Colebrooke, to ascertain the extent of their capacity to serve me, as to the degree in which I have been served. That firm is too opulent, too honourable, and too highly respected, to have its assertions made questionable, even by the Report of a Commission of Inquiry. To it, therefore, I refer those who are interested in ascertaining the extent of my resources in that quarter, quite satisfied that the result of their

inquiry will bear out any statement of expenditure I may have made. If every principle of justice had not been violated by Earl Bathurst, in his refusal of permission for my return to the Cape to collect evidence in substantiation of my charges against Lord C. Somerset, the commissioners would have had no difficulty in obtaining all the information they require, and I suspect *infinitely more;* but, as this injustice has debarred me from giving vouchers with assertions, I shall content myself with saying, these gentlemen are "led to conclude" very erroneously.'

Par. 6.—'Through the recommendation of the acting Governor, the superintendent of the Government-farm at Somerset was induced to advance to him a certain quantity of stock and grain, amounting to the sum of nine hundred rix-dollars; and it appears that he obtained similar advances from a subordinate officer of the same establishment.'

The first assertion in this paragraph, as far as my knowledge goes, is altogether untrue, and I think it highly improbable that Sir Rufane Donkin should have made such a recommendation of a perfect stranger to Mr. Hart. Sir Rufane had quitted the frontier before I even contemplated any purchase of cattle from this man; and I think it as unlikely that he could have had the impudence to make such an application to him in Cape Town, as for Sir Rufane to have attended to it.

"As this cattle transaction was the foundation of all the persecution subsequently heaped upon me, in the *name of law,* it will be necessary to detail it fully. Shortly after taking possession of the farm, which lay on the direct road to most of the locations, I had frequent opportunities of conversing with the settlers,

from whom I learnt that a scarcity of cattle for purchase was the most prevailing difficulty at the time. It appeared also in many cases, that industrious families were without cows for the supply of milk to their children, from inability to pay their purchase money prompt; and the few procurable in the neighbourhood were sold at very extravagant prices. It occurred to me that this difficulty might be removed by collecting a large supply of cattle on my own farm, which I could sell to the settlers, with a fair profit, at prices much lower than they were then paying, and give an encouraging credit to the needy. I therefore consulted Mr. Hart, the great colonial cattle dealer, who strongly recommended the plan; and after explaining to him the credits I proposed giving in most instances of sale, it was agreed that he should supply me with any number of cattle required, at twelve months' credit from the day of delivery, and receive one-half of the profits of sales. I accordingly gave him an order for 30 oxen, 200 cows, and their proportion of bulls—and at the same time selected two young horses out of a lot of nineteen, then in the town, which he particularly recommended me to purchase. With the cattle came the following letter:

DEAR SIR, Somerset, 7 June, 1820.

You will receve herewithe two span of good draught oxen, one span all black, and one all red and white, also one fatt ox for slaughter, in all 21 oxen, at thirty rds each, making 630 rds. As I have too much at present to do, I told Mr. Devenish, a gentleman here withe me, what agreement I had made withe you, and beged of him to execut it, which will be the same as if I had done it, he has bought a number of cowes and calves, bulls, and I beleave 10 oxen, which will also ac-

company this, he of cours will send you a note withe them informing you of their number, also their price. I am sorry that the two horses you wished to have are come here, as there will be no such things, and sending them now, they being boath untaught, they cannot be either led or rode, and two cannot be drove well, the chance is that boathe would be lost on the way to Graham's Town.

If you find that those cattle will answer, inform Mr. D. or myselfe, when he or I will endeavour to procure more if necessarey. Yours truly,

R. HART.

To B. Burnett, Esq.
Graham's Town.

The number received I cannot call to recollection, nor have I any record of it among my papers, as most of the documents connected with this affair were exhibited to the commission of circuit at Bathurst, and detained by Messrs. Bresler and Fleck, the former of whom has since destroyed himself; but I think forty oxen were sent, and about 100 cows, the Hottentots having lost some on the road from Somerset; the number may be however pretty well determined by the price: the cows averaging at least thirteen dollars; and the whole debt, including six bushels of barley supplied for seed by Mr. Commissary Johnstone, at Mr. Hart's desire, amounted to 2654 rix-dollars; one thousand of which I paid Hart before the expiration of three months, although, and I regret to say but by parole agreement, entitled to a full year's credit.

This is a full statement of my dealings with Mr. Hart; and I appeal to the public, whether any part of it can warrant a supposition that I could regard the Mr. Devenish alluded to, as a principal in the cattle transaction, or in any other light than Mr.

Hart's agent, commissioned to execute his orders? Yet, on the mere circumstance of Mr. Devenish, whom I had never seen, having sent the cows, they claimed the balance between them, and for no other earthly purpose but to accumulate law expenses. When their animosity burst forth, (from causes that will be hereafter narrated,) they instituted separate actions against me—Hart for 905 rix-dollars, and the other for 754. There is no process of rascality that can succeed in smothering these facts, or gainsaying one word I have written on the subject, although his Majesty's Commissioners, with the most insidious distortion of them, conceal the payment of the 1000 dollars, give the balance the appearance of the whole original debt, and, with fitting dexterity, colour the mere occurrence of Mr. Hart's agent sending the cows, into "obtaining similar advances from a subordinate officer of the Somerset establishment," a man I had never seen or heard of!!—and the *supply of "grain,"* proves to be six poor bushels of barley!

Par. 7.—'Mr. Burnett repaired to his farm, and applied himself with activity to the production of green forage for the use of the cavalry of the Cape Corps stationed at Graham's Town; having been encouraged in this pursuit by the great demand that Lieutenant-Colonel Somerset informed him existed for green forage, and by the facility with which it was supplied from the gardens and allotments of the officers of the corps, and of the inhabitants of Graham's Town.'

The farm in question contained 278 acres, about sixty of which were of low alluvial soil, greatly exhausted by former slovenly tillage, then entirely overrun with weeds, and situated within a mile of the cavalry barracks. A constant preference of the forage

grown upon it must have realized a very handsome income, and justified a considerable outlay, especially as an unexpected augmentation of the Cape corps, from Lord Charles Somerset's neglect to detain the 21st dragoons, would probably have increased both the consumption and the price. There were also other considerations which induced me to take it: Mr. Hart was the intimate friend of the commissary, and I certainly calculated on his kind offices; and Captain Somerset, with whom I was on good terms, had positively assured me that I could not grow more forage than I should find ready consumption for. Advantageous, however, as these points were, they must be balanced against the disadvantages I had to contend with. I had no bevy of people at six or seven pounds a year wages, but had to hire them, at from twenty to forty dollars per month. I had no rations supplied by Government for their support; but, at a period of almost famine, had to purchase my supplies at exorbitant prices. I had no implements of agriculture, nor tools for building, lavishly issued to the settlers from the Government stores; but had to construct the former, and pick up the latter in all directions, as distress or idleness induced the settlers to part with them. And finally, I had the *esprit de corps*, and the growing vengeance of the Government frowning at me, for having justly chastised a military man.

The "ease with which green forage was supplied from the gardens, and allotments of the officers of the corps" was indeed notorious, and a subject of universal dissatisfaction and complaint. Whatever may be urged by the commissioners to the contrary,

and whatever replies their examinations may have succeeded in extracting on the subject, the fact is undeniable, that with "means and appliances" utterly beyond the reach of the predial emigrant, green forage was cultivated by the military with a facility, and its consumption secured by a preference so palpable, as to defeat all attempts at competition. By reference to the returns of forage purchased by the commissariat, from the early part of 1820 to the end of 1823, it will be seen that, out of 162 distinct deliveries, 74 were from the military. It is curious to observe, too, that Lieutenant-Colonel Somerset's name does not appear in the list, although he declared to me, in 1820, that his sale of forage for the season, from his grant only, amounted to 700 rix-dollars: this concealment is effected by selling in the name of a serjeant.

Par. 8.—'A lease of this farm had been executed by Mr. Hart, the owner, dated 13th June 1820, in favour of Mr. Burnett, in which it was stipulated that he should have possession of it for three years, at an annual rent of six hundred rix dollars, commencing on the 6th of May then past, with an option of renewal at the end of the term for three years longer, and a power of purchasing the farm, at any time during its continuance, for the sum of seven thousand rix dollars. Mr. Burnett entered upon the land; and, in consequence of an application that he made to the acting Governor, Sir Rufane Donkin, he received in the same year a grant of land, consisting of 1200 acres, as well as a building allotment at Bathurst, subject to a condition of locating seven persons on the former, as soon as he could obtain them from Cape Town, and of constructing a house upon the latter, within three years from the date.'

I have nothing to observe on this passage, but that the land-marks on the grant, as affixed by the sur-

veyor, give a much larger area, which has been variously guessed at from 2500 to 3000 acres.

Par. 9.—'Although Mr. Burnett had expressed himself greatly dissatisfied with this grant in several memorials, and had importuned the Colonial Government for an extension of it, yet he himself bears testimony to its value, in letters dated 9th August and 1st November 1820, that he possessed "a place under such singular advantages, that he could not but foresee a most prosperous issue to his undertaking; and that from its command of wood and water, and its contiguity to Graham's Town, it was considered the finest and most valuable grant on the frontier."'

Perhaps no part of the Report so decidedly manifests the spirit in which it is written, as the above paragraph; for on reading either the memorials, to which the commissioners had official access, or my private correspondence, which they obtained by artifice, it will be seen that no deduction from either can warrant the contradictory declarations they have so pithily exhibited.

In my description of my place to Mr. Eaton, although I used the term *grant*, any advantages ascribed to it were always considered by him, and every one else, as accruing from its union with the farm; and in this conjunctive sense it justly bore the character of the finest grant on the frontier; but separated from this, so far from its deriving increased value, it was absolutely deteriorated by its contiguity to Graham's Town and the barracks. It was so eternally exposed to trespass and depredation as to keep my people constantly harassed, and subject me to a considerable annual loss; it had no water but at depths unavailable for irrigation. It had not ten acres of soil capable of receiving the plough; a great proportion of

it was covered with lemon-grass, which cattle will not touch; and what I esteemed its greatest advantage when I wrote to Mr. Eaton, the facility with which it could supply fuel to Graham's Town, I had soon occasion to find was possessed but in common with locations five, or even ten, miles off.

Captain Somerset, during our ride near the grant with the surveyor, was the first person to point out the disadvantages, especially dwelling upon its deficiency of arable soil; and it was at his very suggestion that I memorialed the Government for an additional piece of land capable of tillage. He said, that separated from the farm, it was a grant by no means commensurate with my title or expectations, and a just feeling prompted him to hint the propriety of the application I made. Had I at that time opposed the public measures of Captain Somerset, and thwarted his proceedings during the absence of his father, in conjunction with the parasites who have since grovelled at his feet, *the additional grant would have been given!!*

If I have made it clear that the grant, abstracted from the farm, possessed none of the advantages enumerated in my letter to Mr. Eaton, was it fair, was it liberal, was it gentlemanly, in the commissioners, to hold me up to the public as capable of expressing opposite opinions in the same breath, by picking out passages of a correspondence at apparent variance, but so easily reconcilable with consistency and truth? while, at the same time it must be borne in mind that the Colonial Government had no manner of right to consider my claim upon its justice at all prejudiced by the possession of the farm; but, on the contrary, the very circumstance of expending my

capital on hired land should have been considered a tacit proof that I had none of my own worth cultivating.

Par. 10.—'Mr. Burnett immediately commenced the cultivation of his land, and employed a considerable number of labourers and workmen in throwing up fences, and in the improvement and embellishment of some garden-ground on the farm of Mr. Hart, as well as in repairing some small cottages that he found upon it. He also built an ornamental rustic lodge, and surrounded a large portion of his garden-ground with park palings. Having established a connection with a mercantile house in Cape Town, he continued to receive supplies from them, consisting partly of articles that were wanted in the district, but that were not of a description that would tend to augment or improve the agricultural value of his farm.'

'When I took possesion of the farm, the only building upon it was a hut, composed partly of watling and mud, and partly of stone; consisting of four rooms, in a row, about ten feet by twelve each; and the whole constructed in the roughest way, and of the worst materials. The interior had no roof beneath the thatch, which let in the weather at every part, and the walls were plastered with mud. This structure was adorned with three casements, about twenty inches square, only one of which was partially glazed; and the only two doors consisted of boards nailed together, the whole presenting a picture of ruin and desolation. It might have been erected with the utmost ease, by two men, in one week, and at a cost, extravagantly rated, at ten pounds sterling. Within fifty yards of this mansion stood a Hottentot's hut, about six feet by four, composed of four posts, surrounded by mats, and the sticks forming its roof

covered with flags. An infuriated ox entirely demolished this *cottage*, by unfortunately getting it within the segment of the rope which held him. About a thousand yards from these dwellings, was a spot of land called "the Garden," environed, on three sides, by the river Kowie, and, on the fourth, by a very pretty hanging wood. In this stood about thirty peach and apple-trees, more than half of them destroyed by firing the grass. The surface of this spot was so uneven, as to present a rise on the side towards the river, varying from three to four feet above the opposite level; the whole area contained something less than two acres, no vestige of gardening was traceable, except in the remains of a few cabbage stalks, and two rows of neglected celery. Such was the farm of Doorn Valley when I became its master; upon which, for the first six months, I fed from fifty to sixty-eight mouths, and seldom less than thirty for the ensuing year. I shall now contrast, with this description, its appearance twelve months afterwards.

The public road, from Graham's Town to Bathurst, divided the farm into two unequal parts; the lesser embracing the garden and about forty acres of land. On this side, and immediately opposite the garden, I had fenced in about fourteen acres, with bank, ditch, and palisades. A low piece of soil, about an acre in extent, I had laid out for an orchard, having planted in it about two hundred fruit-trees. On a rising ground, within this inclosure, and so situated as to overlook the whole of the farm, was erected a poligonal lodge, twenty-eight feet diameter, including the awning, which was a continua-

tion of the roof, supported, at its fourteen angles, by pillars of trellice; the interior formed two rooms of comfortable dimensions. Opening to this lodge, from the road, was a pair of folding gates, with smaller ones on each side, and the two sides ornamented with large stone pillars. On the bank, within the inclosure, I had planted peach stocks, and the whole was highly tilled, preparatory to its formation into a vineyard. In all my proceedings, I had an eye to permanency, instead, therefore, of erecting temporary habitations, to be afterwards demolished, I determined that all I did do should be well done. Across the river, and in the space described as the garden, I selected the most eligible spot on which to build a house; but in consideration of the comforts of my servants, I commenced with the kitchens first. These I completed with burnt brick, made on the farm, forming a building about forty feet by twenty, with store-house behind, and lofty attics above. The advantages of a good garden had not escaped me at the outset, as I justly calculated, that, with so many mouths to feed, an abundant supply of vegetables would be both salutary and profitable. I had hired a very good gardener, who had as many men as could be spared from the farm under his control. After the tedious and expensive process of levelling the ground, I laid out and completed a garden, said, by every person who had seen it, to be *unrivalled in the colony*. The fruit-trees were numerous, and of the choicest kinds, most of them budded or grafted by myself, and these I had purchased from various parts of the district, and many from Cape Town; they consisted of peaches of fourteen sorts, apricots,

apples, plums, cherries, oranges, figs, mulberries, and fourteen thousand strawberry plants; we had also a profusion of vegetables, and hundreds of persons in the neighbourhood, as well as some more distant, can bear testimony to the quality and profusion of my horticultural productions. On the opposite side, my industry was not less conspicuous: three ploughs, and two pair of harrows, had been constantly at work; and I had the satisfaction of seeing the whole of the cultivatable part of the farm covered with crops of barley and wheat; and all this fair prospect was doomed to be blasted by the avarice of one man, who brought upon me endless litigation and persecution, for no other purpose than to get possession of the fruits of my skill and industry.

I have been particular in giving this detail, because, since the subsequent desolation on the farm, the utmost pains have been taken to represent my expenditure as nothing, and my labours purely imaginary; and because the commissioners, with their prevailing partiality, have described creation as "improvement," and the entire construction of buildings, as the "reparation of cottages" that never had existence. If the commissioners retort, that they made their Report in Cape Town from information collected there, how much greater their injustice in slighting my pressing solicitations at Graham's Town, that they would enter upon their meditated inquiry upon the spot, while I was present to offer them the best testimony, and before it was thought worth while to pollute it in the scandalous manner in which it has been done. Mr. Bigge can advance no plea of ignorance of my intentions, for the last words

I ever uttered to him were a solemn pledge that I would bring my case before Parliament.

The concluding period of this paragraph is false in every one of its assertions. In the vessel which took me from Cape Town to Algoa Bay was a lady passenger with three children, to whom I extended all the little service in my power. On reaching the frontier, where, from the great influx of settlers, lodgings were unattainable at any price, her husband, a Mr. Bennett, invited me to take up my abode at his house. He had been a merchant in Cape Town, but had failed, and was at this time endeavouring to establish a trade in Graham's Town: his resources were limited and his credit bad; but, as I had a high opinion of his integrity, I felt disposed to serve him. At this time tea was very scarce on the frontier, and at his intreaty, I wrote to Mr. Eaton, a merchant in Cape Town, to whom I had been introduced, to send me seven chests of tea, and took that opportunity of ordering a few gross of Caffre buttons and a little wire for myself, in the event of paying Caffre land a visit. The cost price of the tea, charged to me by Mr. Eaton, was the price placed to my credit, which, with the addition of bills on England and drafts on Cape Town, amounted to five thousand five hundred and thirteen rix-dollars, *the whole of which advances I was under the necessity of taking out in supplies for the farming establishment!!* Mr. Bennett's bills are now in my possession, and a hundred references might have been made by the commissioners to persons well acquainted with the fact, if anything like *truth* or *justice* had governed them in search of materials for their Report; *and this*

*too is the only dealing transaction on which these charges of my having traded are founded.*

Par. 11.—'About the commencement of the year 1821, he received an application from Mr. Hart for the payment of his account for advances, which, as he was unable to liquidate, became the subject of judicial process, issued from the Court of Justice, in the month of February of that year. It is necessary here to observe, that, on the 24th of the same month, Mr. Burnett had executed, before the secretary of the district of Uitenhage, an assignment of all his property, including credits, in favour of the mercantile house at Cape Town, that had made pecuniary advances to him.'

Par. 12.—'Information having been received by this house respecting Mr. Burnett's credit in England that was not satisfactory, and the bills that he offered them in payment having been tendered for sale without success in Cape Town, they were induced to accept the assignment and mortgage of all his property of every description, which he was further empowered to occupy and retain for their benefit, transmitting to them an annual account of the proceeds. The instrument was executed before a notary of a neighbouring district, with a view to avoid the injurious effects that the notoriety of the transaction, if it had passed in his own district, would have produced.'

The Commissioners of Inquiry dwell with such pointed emphasis on this assignment of my property to Mr. Eaton, and they have so laboured to give it a dishonourable colouring, that if nothing else were wanting to mark the character of their scrutiny into my case, this alone would be sufficient; for there never did occur a transaction more simple, more plain sailing, and more upright in all its elements. Long prior to the application of Mr. Hart for the balance of his account, which was on the 2d of January 1821, and this in violation of his compact, Mr.

Eaton had requested me to give him bills on England, for part of his account, and I forwarded him two for a hundred pounds each, in every respect similar to others he had already placed. The following post brought me a letter from Mr. Eaton, returning the bills, which he stated had been put up in the Commercial Rooms without obtaining a bidding, and concluded by requesting an assignment of my property on the frontier, as security for his advances. I felt both surprized and pained at the request, but, nevertheless, conveyed an immediate acquiescence to his proposal. As this circumstance had transpired, it had been hinted to me that Hart, the moment he learnt it, had avowed his determination to proceed against me forthwith for the recovery of his balance; and I was cautioned that, if he did, the firm of Ebden and Eaton would, of necessity, enforce their preferent claim also, and all the fruits of my industry and capital would be squandered under sequestration, virtually to pay Mr. Hart 905 rix-dollars. Now, I will appeal to any being of common sense and honesty, whether I should not have been the most egregious fool to have submitted to this spoliation of my property, for no other object than the infliction of utter ruin, while the laws of the colony offered me the legal means of preventing it? By those laws a preferent creditor may exact an assignment of his debtor's property within forty-eight clear days of the declaration of such debtor's insolvency: here the assignment to Messrs. Ebden and Eaton bears date the 24th of February 1821, while the proceedings of Hart against me did not emanate from the court of justice till the 21st of the following March,

nor was the sentence pronounced till the 26th of July in the same year.

Here is a legal bona fide transaction, originating in the natural desire of a merchant to obtain security for his advances, and subsequently perfected to defeat the machinations of an enemy, eager for my destruction; and yet, the commissioners, during a conversation with Mr. Eaton, utterly regardless of their opinion, that if neither English, Dutch, or Colonial law could warrant my banishment from the Cape for writing a memoral to his Excellency, Roman, or any other law should be resorted to; sought, in spite of existing enactments and the dictates of common sense, to taint this transaction with dishonour, on the principle that it was foreign to the practice of Great Britain! so that laws, it appears, in any point where I am at issue with the authorities, are to be arbitrarily selected from any codes, if they can but be brought to operate against me!

The information of the state of my credit in England, as alluded to by the commissioners in the Report, I have never been made acquainted with till within the last fortnight, and this information appears to have been the malicious suggestion of a person at Cape Town to Mr. Eaton, that it was more than probable my drafts upon my friends would not be honoured; nevertheless, the two bills returned me by Mr. Eaton, in consequence of this information, were immediately afterwards placed by other merchants, and *punctually discharged.* The commissioners are prompt enough at pointing out a slander upon my credit, but they studiously conceal the truth which repels it; and the conclusion of the

same paragraph more strikingly marks this inclination, as the imputation of a motive there, that never had existence, is founded not upon any distortion of a truth, or adroit obliquity of reasoning, but upon *fabrication altogether!* for, as the reader will perceive, on consulting Mr. Eaton's power of attorney to me, that my assignment was executed in *my own district*, and by the secretary to that district, the only notary public, and, consequently, the only man then on the frontier who legally could execute it!! Graham's Town, at that time, was in the district of Uitenhage; but had it even been otherwise, the secretary to that portion of the district, afterwards called Albany, was not a notary public; and if he had been a notary public, this infamous imputation was unmerited, because Mr. Stædel was instructed on the subject, *not by me*, but by Mr. Eaton; and so far from concealment being practicable or contemplated, one of the chief objects of the assignment was to deter Mr. Hart from his threatened proceedings, which could only have been accomplished by giving it immediate publicity. The object of my journey to Uitenhage was known throughout Graham's Town, and if the facts I have stated were wanting to cast back this injurious and unwarrantable imputation, an inevitable consequence entailed by the execution of this assignment was its immediate promulgation before the Board of Landdrost and Hemraaden to the general information of the whole district. The impartial will now begin to see what sort of an inquiry this is likely to prove, and what is the covert mission of these gentlemen.

Par. 13.—'In the meantime, the action that Mr. Hart had instituted against him was proceeding; and as Mr. Burnett

did not repair to Cape Town, according to the summons, or employ an advocate there in his defence, sentence was pronounced against him, on the 26th July 1821, by default, after four separate summonses had, according to the practice of the court, been duly served upon him by the messenger of the district of Albany. It has been asserted by Mr. Burnett, that these forms were conducted in the Dutch language, which he did not understand; but we have every reason to believe that they were accompanied by English translations, a practice that is observed in all cases where there are English parties; more especially as to every one of the summonses that were served by the messenger, Mr. Burnett invariably replied in English, and in a manner that proved his entire acquaintance with the nature of the proceedings. The sentence of condemnation of payment was transmitted by the sequestrator, (the officer who executes writs,) to his agent in the Albany District, on the 27th October 1821.

It is not my purpose to cavil with the commissioners, or stumble over every straw in the filthy track through which I am compelled to follow them; but I must, and will, defend myself from the unjustifiable insinuations which they so laboriously heap upon me; for, in effecting the manifest object of their delegation, I see no reason that I should be slandered and libelled with impunity. If Lord Charles Somerset must be screened, in God's, or Earl Bathurst's, name, let it be so; but let it be without my total sacrifice, or the immolation of more victims to this leviathan "Beaufort interest."

In the above paragraph, the commissioners assume a course in the proceedings, and a knowledge of their tendency, on my part, in Hart's process, which I utterly deny. The summonses were *invariably* served in dutch, without translations; and, up to the

period of the sentence being propounded, I had no idea but that the assignment to Mr. Eaton would effectually shield me from the deplorable consequences it entailed. It is true, I collected enough from the messenger to acquaint me, that Hart was enforcing his claim with the strong arm of the law; but, as to the character of his process, its duration, or issue, I was throughout in profound ignorance; although the commissioners *affirm* my "entire acquaintance with the nature of the proceedings."

Par. 14.—'On being summoned to point out property in payment of this debt, Mr. Burnett produced before the landdrost of the district, (the agent to the sequestrator,) a notarial act of assignment of all his property to the firm of Messrs. Ebden and Eaton, together with a power of attorney from them, to act as their agent in the administration of the property. He further declared, that since the passing of this deed, no property of any description had become *bonâ fide* his, and that he had no property of which he could render an inventory.'

Par. 15.—'Considering this declaration to be somewhat unusual, the sequestrator required that it should be confirmed by the oath of Mr. Burnett; a precaution that had been already taken by the agent. A similar declaration having been made by Mr. Burnett, in answer to another sentence that was issued against him, the sequestrator proceeded to advertise, in the Cape Town Gazette, of April 1822, a notice to the creditors of Bishop Burnett to send in their claims in consequence of his insolvency.'

Nothing can be more clear and simple than this proceeding. Major Jones, the landdrost, in his capacity of agent to the sequestrator, requested my attendance at his office, for the purpose of hearing a sentence from the court of justice pronounced against

me in favour of Mr. Hart. To the question, whether I was prepared to pay it, or yield up sufficient property to cover its amount, I gave the only conscientious answer I could give—that I had no property but what was legally assigned to Messrs. Ebden and Eaton, under whose power of attorney I was then conducting the establishment at Doorn Valley. How such a declaration should be considered "unusual," I am at a loss to imagine; its converse certainly would have been; for I trust it is unusual for a man to declare himself possessed of property after a legal, solemn assignment of it to his creditor. But, even here, a fact occurred to the prejudice of the proceedings founded on this declaration, which I have omitted to relate in my narrative to Earl Bathurst, namely, that I then tendered, in person, to Major Jones, my claim upon the commissariat, as a source yet available, for its payment; fortunately, if Major Jones were less distinguished for every honourable feeling, he is too independent of the "Beaufort interest," and too much aloof from Cape trammels, to join in the conspiracy against me. I appeal then to him, as a gentleman, to confirm this statement, and I am the more sanguine in my prediction of the result from a lively recollection of the conversation which passed, and that the ground of his refusal to receive it, in liquidation of Hart's claim, was my want of Captain Somerset's certificate, to give it authenticity and value; while my correspondence with Major Jones, on the subject, will show that he was both well acquainted with the nature of this claim, and anxious to promote its discharge.

Par. 16.—'In a conversation that took place between the sequestrator and the principal creditor of Mr. Burnett at Cape Town, on presenting the account of his claims, the former, having but an imperfect knowledge of the English language, seems to have mistaken a declaration of this creditor's wish to defer the sale of the property of Mr. Burnett, for an undertaking to arrange the payment of his debts, and, under this belief, despatched an order to his agent to suspend the proceedings against Mr. Burnett, and to call his creditors together, and submit to them the proposals he had made for the gradual payment of their claims. These proposals having been withdrawn by Mr. Burnett himself, and no satisfactory adjustment having been made with the sequestrator, his agent at Graham's Town, at the instance of Mr. Hart, (who contended that he was entitled to the possession of his farm,) proceeded to a valuation of the improvements that Mr. Burnett had made upon it. The valuation was made by two persons appointed by the landdrost; but no other steps appear to have been adopted for Mr. Burnett's removal.'

With what conversation took place between Mr. Eaton and the sequestrator I have nothing to do, because I was not instrumental to it. Long prior to the advertisement of my property for sale, I had proposed drafts on England for the paymant of the claims upon me, under the firm impression that my friends there, from whom I had ever received the kindest services, would cheerfully contribute to defeat the infamous conspiracy for my ruin; but, when my name was so iniquitously advertised as insolvent, and the day of sale appointed, I gave up all determination of stemming the torrent any farther, and relinquished the design of drawing upon England altogether. But the excuse sought for the sequestrator, who has since been superannuated from *incapacity*, shall not prove availing, either in my supposed proposition through

Mr. Eaton, or his ignorance of the English language: for the suspension of the sale proceeded from far different causes. Those were no less than the apprehension of the Colonial Government that it had gone too far; and that consequences might follow, from my return to England, which it would be a point of wisdom to avert: and I appeal to Mr. Buissinne, who has so ably vindicated me during my absence, if this was not his opinion at Graham's Town. Admitting, however, the truth of these allegations, and that the sale was suspended by mistake; this mistake must *instantly* have been discovered by the sequestrator, when, if his proceedings were legal, the case reverted to its previous state, and, with any regard to justice, either to the creditors or myself, it was his bounden duty to have enforced the sale: while, if, on the contrary, he found he had been in error, it was equally incumbent on him to lose not a moment in revoking the unwarrantable publication of insolvency. But what was the course pursued by him? he committed the foulest injustice on all parties: he neither sold the property, *then adequate to every demand* but rapidly deteriorating from neglect, and the compulsory discharge of my people for the satisfaction of the claims upon it; nor, on the other hand, did he relieve me from the disqualification he had imposed; but suffered every thing to lie in abeyance for a period of twenty months; exposing me, during the whole of that time, with designs, the public shall see, were meditated, to the mercy of any ruffian who might please to charge me with the commission of fraud, though incurred in the act of buying bread for my family.

The valuation of the improvements on the farm was all a farce, and ridiculed as such by every sensible person in the district. Flood, however, and the absence of labourers for its cultivation, had left very little to value, but the assessment of even that little was a barefaced scheme to rob me. The parties selected for this purpose were both Mr. Hart's particular friends, and *both at the time lying under heavy obligations to him!*

Par. 17.—'Both parties feeling dissatisfied with this state of things, Mr. Hart being disappointed in not being able to recover his debt, or the possession of his farm, and Mr. Burnett having been injured in his credit by the public declaration of his insolvency, addressed complaints to the Government and to the Court of Justice, and brought actions against each other before the Court of Circuit in the year 1822, the first to cancel the lease and to eject the tenant on account of his insolvency; and the latter, to recover damages for illegally attempting to eject him, and for serving him with notice to quit.'

Par. 18.—'In the first action Hart relied upon the declaration of Burnett's insolvency, and produced a Gazette in proof of it; but Burnett having alleged that he had no opportunity of obtaining the documents necessary for his defence, and as the court found upon referring to the landdrost of the district, that a correspondence was still open with the sequestrator upon the subject, resolved that the further consideration of the case should be postponed, and that time should be allowed to the defendant to disprove the allegation of insolvency.'

Par. 19.—'The action of Burnett against Hart for illegally attempting to dispossess him, was deferred by consent, and upon a suggestion from the court, that the entry of the cause should be amended by making the sequestrator a party to the defence. It is alleged by Mr. Burnett that the commissioners of circuit in the year 1822, made a formal declaration of the irregularity of the proceedings of the

sequestrator, but we do not find that any mention of such a declaration is entered upon the records of the court. It has been stated, by a very competent witness, that he heard one of the commissioners of the court declare that the proceedings were irregular, for want of a schedule of the debts and credits; but even if this declaration had been so made, it would not have had the effect of superseding the act of the sequestrator, for the terms in which the postponement of the trial was granted, implied a necessity of obtaining further evidence. We have referred to the commissioners of circuit upon this point, and find that although they differ in their recollection of what was said by one of them upon this occasion, yet they have finally concurred in thinking that the consideration of the question of insolvency was suspended, and left open to future discussion; we cannot therefore concur in the assertion made, and often repeated by Mr. Burnett, that his insolvency had been declared by the court, in 1822, to be irregular or unjust.'

It is necessary to blend the matter of the foregoing paragraphs in my answer, as they all involve the same subject; and as considerable pains have been taken to divest it of its proper importance,—the commissioners studiously omitting all notice of the consequences it entailed,—I shall give it fully; the public will then have a further opportunity of judging of these gentlemen's *impartiality*.

I have already stated that the sequestrator founded his publication of my insolvency on the solitary fact of Mr. Hart having obtained a sentence against me for 905 rix-dollars, and that I esteem this publication to be unquestionably illegal, from the circumstance of my having tendered a claim, greater in amount, upon the commissariat for its liquidation. It follows, that if any claim is substantiated, the se-

questrator has refused a legal tender for the discharge of the sentence, and that his act is consequently illegal; or, that if my tender was defective from not being accompanied by Captain Somerset's voucher, this illegal act has been produced by injustice on his part; so that I am clearly aggrieved by one, or the other, in his official capacity. This publication was in the Cape Town Gazette, of April 13th, 1822, and the sale of the property advertised for the 22d of July following; when, by public declaration of the landdrost, it was suspended, although my people had been discharged at his desire, and every operation upon the farm altogether relinquished. I considered this suspension of proceedings, on the part of the sequestrator, as a virtual confession of error, and to prove the fallacy of the excuse, that it originated in my proposition of drawing upon England for the payment of the claims upon me, this proposition was never entertained for an instant, *nor ever was I officially applied to on the subject!* Yet with what pains the commissioners glean out this casualty, which had never the remotest influence on the proceedings, to extenuate the conduct of the sequestrator, and make his irregularities traceable to me.

"Dissatisfied," indeed, "with this state of things," I decided on bringing matters formally to issue, by the institution of proceedings against Hart at the next commission of circuit; and entered them accordingly. The proceedings of this commission, as given in the Report, I have no hesitation in saying, are *designedly* curtailed and *falsified*, and the inferences drawn from the little the commissioners have

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permitted to appear, are in *no one respect* warranted by the premises. Not one word was said by me about, "documents necessary for my defence;" I simply repelled Mr. Hart's production of the slanderous advertisement of insolvency, by denying its legality, and appealing to the court to confirm my assertion. *The court did instantly confirm it in the most explicit, distinct, and unequivocal terms.* And when the proceedings had terminated, to "make assurance doubly sure," I addressed it, with a repetition of my request, that, as this advertisement had established a general belief of my insolvency, greatly to my prejudice, it would, before the public then assembled, relieve me from this obloquy, by a declaration of its illegality. Mr. Buissinne, the presiding member, directly replied, "*Mr. Burnett, this proceeding has originated altogether in mistake, you are not insolvent, but as free to act in your own concerns as any other man.*" These, I solemnly protest, were the words used, and the following letter from Mr. Buissinne to the commissioners, will pretty well confirm my statement:

His Majesty's Commissioners of Inquiry, &c. &c.

GENTLEMEN, Caledon, 25th of October, 1825.

I do myself the honour of acknowledging the receipt of your letter of the 28th instant, enclosing an extract of a memorial of Mr. Bishop Burnett, submitted to Earl Bathurst, purporting to give a statement of the proceedings that took place before a Commission of Circuit, at Graham's Town, of which I was a member; and in reply beg leave to state, that it being one of the principal duties of the Commissions of Circuit in this colony, before they enter into an investigation of a case brought before them, to use their best endeavours to bring the parties to conciliation.

The Circuit Commission above alluded to, composed of Mr. Bentinck and myself, did not fail strictly to attend to that point, and consequently did so, in a case of Mr. *Hart* versus Mr. *Burnett;* and finding that Mr. Hart, depending too much on the strength of his cause, seemed quite averse of coming to terms, thought it their duty to inform him, that his case was *not so good as he imagined*, because he had brought forward the same under an impression that Mr. Burnett's estate was insolvent, which, although so asserted by the sequestrator, Mr. Ryno Johannes Van der Rict, in an advertisement in the weekly paper, was known to the Commissioners to be still doubtful, the sequestrator having made a mistake, or acted without sufficient caution. This was a fact; for the sequestrator having asserted the insolvency of Mr. Burnett's estate a few weeks before the Commission of Circuit set out, a remonstrance of Mr. Burnett's against it reached the Court of Justice before their departure, and it appeared clear that the sequestrator had done *what he was not warranted to do*, namely, that he declared Mr. Burnett's estate insolvent without sufficient grounds.

I cannot now recollect what the exact particulars of the case were, but I think that Mr. Burnett, having been called upon by the sequestrator to pay, or give security for the payment of an award against him, tendered a bill on somebody in England; and that the sequestrator took this for a proof that he had no effects to answer the demand, and therefore declared Mr. Burnett's estate insolvent. This, or something of the kind was the case. At any rate, there was something wrong on the part of the sequestrator; and the Commission of Circuit conceived themselves in duty bound to consider Mr. Burnett's state *still in a state of insolvency*, and to inform Mr. Hart of the circumstance; who, on hearing it, withdrew his case. Something may have been said in regard to the interests and the title deeds of a farm in question, but I cannot recollect it.

There was another case between the parties, *vice versâ*, on the lists, viz. *Burnett* versus *Hart*, for damages occasioned by illegal proceedings, respecting the farm above quoted. Here Mr. Burnett was averse to conciliation, and was therefore told that his action had not been brought forward as it ought; for that if the proceedings respecting the farm were such as

stated by him, Mr. Hart and the sequestrator must be implicated, and the action not brought against Mr. Hart individually; and on this Mr. Burnett withdrew this case.

It may perhaps appear strange that judges should adopt such a mode of proceeding in a Court of Justice; but when it comes to be understood, that from the want of a *proper legal* adviser, (the functionary for that purpose, the district clerk, being inadequate,) many of the cases on the list, though founded in themselves, were brought forward in such a lame and irregular way, that had not the judges explained the mistakes, the parties would have been going on in the dark, and heaping expenses on themselves, without being aware of it; the case will become clear.

This is all I can recollect, and therefore close with subscribing myself, Gentlemen,

Your most obedient humble servant,
P. S. BUISSINNE.

Here, then, are two points established, which I will defy all Mr. Bigge's special pleading to controvert: first, the illegality of my published insolvency; and, secondly, the public declaration of that illegality by a court of justice. If any mind is sceptical enough to entertain one lingering doubt on the subject, let me remove that doubt, by adding still further proof of the light in which this court regarded me. I had a tenant upon my land, against whom I brought an action of ejectment; if insolvent, I could not have maintained that action: but the court tried it, and pronounced a decision in my favour. Mr. Walter Bentinck says, in a letter to the commissioners of inquiry, that in an action against a tenant of my own, whom I had asserted I cast, "It appears, however, from the records of the court, that only an interlocutory decree was passed in *favour* of the tenant." What, in the name of consistency, is meant by an interlocutory

decree? all decrees are interlocutory till officially registered, but are they a bit less operative and binding, because a sleepy secretary neglects to record them; and am I to lose the benefit of a decision solemnly pronounced, because, through negligence, it cannot be found in the court archives? But even this interlocutory decree, Mr. Bentinck asserts, was in *favour* of the tenant—for or against, it does not at all disturb the principle; but to show the subterfuges resorted to in distorting any truth apparently favourable to my case, I shall *disprove* Mr. Bentinck's assertion, and clearly establish that this interlocutory decree was in *my* favour. The tenant held his land on a fourteen years' lease, which had not been perfected, and I sought to eject him on this ground, in consequence of his persisting to keep a canteen without my consent. The court *decreed* that he should remove from the land; but, by interlocutory mutual arrangement, it was agreed, that, as an equivalent for his labour upon it, I should give him 400 rix-dollars, and allow him, I think, six weeks to prepare himself another abode; and this Mr. Bentinck calls a decree in *his* favour! During the interval, he committed so much depredation, that I complained to the landdrost, from whom I received the following letter, which clearly establishes that he was ejected, and that the proceedings of that court were recorded:

SIR, Graham's Town, October 30, 1822.

I have the honour to acknowledge the receipt of your letter of yesterday's date, requesting that in consequence of the trespass and depredations committed on your property, by Henry Ulyate, he may be ordered to remove from your premises

immediately, and to state in reply, that upon reference to the records of the worshipful Court of Circuit, I find an arrangement that has been made between yourself and Ulyate, which was sanctioned by the Court, for his quitting your premises, under certain conditions, on the 31st of December next. I regret, therefore, that I cannot interfere for his ejectment until the expiration of that period, but if he should continue to commit trespass and depredation on your property, I must refer you to the local Court for redress, while I shall be ready, if possible, to check such conduct, which I have this day attempted to do by cautioning him. He denies the facts, however, so decidedly, that I fear nothing can be effected but by legal proceeding and evidence.

I shall make immediate inquiry into the circumstances of your complaint against the Hottentot girl, now in the prison, in order to bring her to punishment.

I have the honour to be, Sir,
Your obedient servant,
HARRY RIVERS.

Mr. B. Burnett.

The commissioners say they find no mention of this declaration in the records of the court. Surely this is not conclusive in a judicatory where documents are interpolated, substituted, or abstracted at pleasure,—nay, *where all the deposited vouchers, in a criminal prosecution, have been known to disappear together!* They state, also, the assertion of "a very competent witness, that he heard one of the commissioners of the court declare, that the proceedings were irregular for want of a schedule of the debts and credits." This is utterly false! not the most distant allusion to debts or credits occurred throughout the proceedings, and their conclusion from this postulate, erroneous as it is, is equally fallacious, for the declaration of my solvency had no reference to any proceedings before the court, but was a preparatory admission to establish my eligi-

bility to maintain an action. The commissioners say, they cannot concur in the assertion, so often made by me, that this court pronounced the insolvency illegal. I should, indeed, be surprised if they did, for that would be a virtual admission that all the iniquitous law measures which at length overwhelmed me, were equally illegal and unjust,—an admission at decided variance with the manifest object of their appointment.

In an ordinary dispute, involving no consequences but to the parties at issue, I should hold it an invidious course to glance at personal motive, or impugn any man's integrity; but, when I know the bulk of the testimony adduced against me, in this very important struggle, is moulded to a special purpose,—when I see every passage in the Report teem with perversion and the grossest partiality,—when I trace out some ramification of the "Beaufort interest" in every page of its detail,—and I find myself singly opposed to this gigantic power, I think I shall stand acquitted, in the public mind, if I go beyond the analysis of effects, and look a little into their causes. This, too, will only be fighting my enemies with their own weapons, for, God knows, I have been most unpitifully mangled by them, and made the parent of motives, even by his Majesty's commissioners of inquiry, that never had existence.

The commissioners on this circuit were Messrs. Buissinne and Bentinck—the first universally considered throughout the colony the most learned, perspicacious, upright judge that ever graced its judicatory, and the other was always esteemed a worthy honourable man. These gentlemen are decidedly at

variance in the Report to the commissioners of inquiry of the proceedings on the circuit in question, but, by the help of a little political key, the public will decide whose veracity is most to be relied on. Mr. Buissinne, through some venial irregularity in his department, (the receipt of land revenue,) became obnoxious to the Governor, and was instantly crushed, like myself, according to law; he has no hope of place or patronage, though far from being in a condition to set power and tyranny at defiance, and I only wonder at his temerity in disclosing so much truth in my favour. Mr. Bentinck, besides his judicial appointment, holds others of considerable emolument, and came passenger to England *with Lord Charles*, for the purpose, it is said, of *exchanging* his colonial situation for one, no doubt, of *equal* value here! The reader will supply his own commentary! Mr. Bentinck writes:

His Majesty's Commissioners of Inquiry, &c. &c. &c.

GENTLEMEN, Cape Town, October 25, 1825.

In reply to your letter of the 22d instant, enclosing for my perusal an extract from Mr. Bishop Burnett's memorial, addressed to Earl Bathurst, I have the honour to state, that upon reference to the proceedings of the court, the statement of Mr. Burnett is found extremely incorrect.

I allude to what occurred three years ago; but, as far as I can bring the case to my recollection, it is as follows:

Bishop Burnett not having paid any rent to Hart, and his insolvency being announced in the Gazette, Hart wished to eject him from the premises. Bishop Burnett pretended not to be insolvent, and stated that the landdrost, Mr. Rivers, must be aware that there was still a correspondence carried on with the sequestrator respecting his (Burnett's) insolvency.

The landdrost admits such a correspondence, and moreover states that all the papers thereunto relating, had been sent to Cape Town.

Under these circumstances, the court could not come to a final decision, and thought proper to postpone the case, in order to give him (Burnett) time to prove his solvency, either to the full Court, or to the next Commission of Circuit.

It was not stated that Mr. Hart had no right to demand rent.

It follows that the title deeds could not be restored to Hart, as the case was postponed.

Mr. B. Burnett further asserts, that in an action against a tenant of his own, he cast him. It appears, however, from the records of the court, that only an interlocutory decree was passed *in favour* of the tenant.

I have the honour to be, Gentlemen,

Your most obedient servant,

WALTER BENTINCK.

I return the Enclosure.

Mr. Bentinck sets out with a distinct untruth, inasmuch as Hart's first year's rent was punctually paid, and the second, as I shall hereafter prove, tendered. "Mr. Burnett pretended not to be insolvent." It was a pretence, at any event, sanctioned by the court, for they confirmed it. I repeat, in the most positive terms, that the court, in reply to my appeal to it, did say to Hart they wondered how he could expect rent from land thrown out of cultivation by his litigation with me, and, that in strict equity, they could not see how he could demand it. The restoration of the title deeds was positively refused by the court, on the plea that the clause of optional purchase made them *bona fide* mine, while I held possession of the farm. The succeeding letter, which is sent at the suggestion of the commissioners, to repair an extraordinary and unaccountable omission in the former, namely, to answer *the most important question put to him*, will not fail to excite the reader's surprise, in direct opposition as its statements are to the honourable account of Mr. Buissinne.

His Majesty's Commissioners of Inquiry, &c. &c. &c.

GENTLEMEN, Cape Town, October 29, 1825.

In reply to your letter of yesterday's date, wherein you observe that I have omitted to state in my letter of the 25th instant, whether Mr. B. Burnett is correct in saying that "it was announced in open court, that he was not insolvent, and that the publication of his insolvency had arisen from mistake." I have the honour to state, that no such opinion has been pronounced in open court.

I beg leave further to submit the impossibility to pronounce any opinion about his solvency or insolvency, as the court was at that moment not in possession of any documents; and therefore granted to Mr. Bishop Burnett, at his own request, a term, in order to collect the necessary documents.

I have the honour to be, Gentlemen,

Your most obedient servant,

WALTER BENTINCK.

Mr. Buissinne's rejoinder to some further application of the commissioners (the *quality* of which is a profound mystery,) completes the case.

His Majesty's Commissioners of Inquiry.

GENTLEMEN, Caledon, November 26, 1825.

I do myself the honour of acknowledging the receipt of your letter of the 18th instant, and its enclosure.

I much regret the trouble I have given you, but at the same time feel a certain pleasure at being at last undeceived.

Mr. Bennangé is right; my information is not direct; but from a quarter that I could not doubt, and never doubted till I perused your letter and the enclosure before mentioned.

As to Mr. Bentinck's assertion, I think I had better say nothing about it: some persons will evade and deny truth if they can; not so I, thank God! Only one question will I suggest: When Mr. Bentinck hears me, in the name of the commission, make a declaration in which he did not concur, was it not his duty to speak? and did he do so?

I shall not trouble you with any more arguments on the subject. You required me to say what I knew on the subject; I thought it my duty to say what I recollected, not to avoid an-

swering the demand by a "I don't recollect." My information proves erroneous, I regret it, crave your pardon, and will stand the consequence rather than deny facts.

I have the honour to be, Gentlemen,
Your most obedient humble servant,
P. S. BUISSINNE.

The question here put by Mr. Buissinne is, indeed, most apposite,—nothing can be more home. In conclusion, to show the light in which Mr. Bentinck regarded those decisions in which, if silence gives assent, he certainly did concur, he called upon me the following morning to take a look at my improvements, at the request of Mr. Buissinne, who was confined by gout, and very cordially wished me happiness and prosperity, *now I had got over my difficulties with Mr. Hart.*

Par. 20.—'Mr. Burnett was thus enabled to retain possession of the farm for another year, and he has asserted that he made a tender of the rent to the secretary of the district; but it is positively asserted by the secretary that Mr. Burnett only requested to know whether he would receive the rent, and upon his declining it as not being part of his duty, Mr. Burnett retired and did not repeat his request.'

In answer to this statement I refer the reader to the seventh paragraph of my 'Narrative to the Colonial Department,' where the facts stand as they occurred; and I think it only necessary to observe, that the circumstance of a messenger of the court applying for the rent having led me to suppose the secretary was empowered to receive it, it is very improbable that I should tender it without the intention of paying it over. I, however, most solemnly protest that I did tender it, and was referred to Mr. M'Donald, of Graham's Town, who likewise refused to receive

it, and I have no doubt his sense of justice will confirm my statement.

Par. 21.---' In the month of May, of the year 1823, Mr. Hart renewed his action of ejectment before the court of justice in Cape Town, but his claim was referred to the then ensuing commission of circuit that arrived in Graham's Town in the month of October. Previous to this period, cross-actions had been entered before the district clerk, amounting in number to nine, but which were reduced to six by the court, with consent of the parties. The order in which it determined to hear them was opposed by Burnett, on the ground of its disturbing the arrangement he had made for his defence, which was framed upon an understanding that the priority that had been given to each cause by the district clerk, would be observed in the hearing. The court, however, having considered that the causes that had been postponed from the former year ought to have precedence, resolved to proceed in the trial of the action of ejectment brought by Mr. Hart, for recovering the possession of his farm, and for cancelling the lease under which it was held, intimating at the same time, that it would give no decision upon any of the causes until all had been heard.'

Par. 22.---' In the action of ejectment, the plaintiff Hart relied upon the declaration of Burnett's insolvency; and now added, for further ground of action, the breach of a condition in the non-payment of rent for two years. The lease contained no positive terms for the payment of the rent, yet Mr. Hart contended that the words "annual payment of six hundred dollars" clearly implied that this sum was to be paid in every year. In support of this position he was permitted to exhibit a certificate of the notary by whom the lease was drawn, attesting, that at the time of its execution an understanding prevailed between the parties that the payment of the rent should be annual. It was contended by the defendant Burnett, that the lease bore an opposite construction; that no rent was due until the expiration of the first three years; that it was optional with him to extend his occupation of the farm until the

end of the following three. He offered no evidence, and the court at the termination of their session, decided that the plaintiff was entitled to enter on the possession of the farm, and condemned the defendant to quit it immediately.'

Par. 23.---' In the next action that was tried, Mr. Bishop Burnett was plaintiff, and complained of the illegal warning that had been given him by Mr. Hart to quit the farm, and of an absolute order that he had received to leave it in the month of April of the current year. It was agreed to join to this case an action that he had entered for damages arising from these notices. Proof was given of the interruption of the labourers whom Mr. Burnett had employed in procuring bark and preparing charcoal in his own grant of land, in consequence of the receipt of the notices, and proof was also given of the profits that might have been derived from the sale of green forage, but dependent always upon the opportunities that might exist of disposing of it. The court rejected the plaintiff's claim for damages in consequence of the notice given by the defendant, who justified it by the public declaration of the plaintiff's insolvency, and of the expiration of the lease in the month of May 1823, and the court also condemned the plaintiff to pay the costs.'

Par. 24.---' The action brought by Burnett against Mr. Hart and the sequestrator, for damages arising from their having illegally conspired to eject him from the farm called Doorn Valley, and which had been deferred in the year 1822, was next heard. The plaintiff proved that an order had been given by the sequestrator to his agent at Graham's Town, dated 28th January 1822, stating, that in consequence of the firm of Messrs. Ebden and Eaton having declared that Mr. Bishop Burnett was not their agent, but that he was indebted to them in a considerable sum, he was forthwith to proceed in seizing and selling all his property. This order had been attempted to be enforced by the landdrost, but had been met by a protest of Mr. Burnett against it as illegal, and a declaration of his intention of retaining possession of the farm until compelled by actual force to quit it. On the part of one of the defendants, Hart, it was contended that no conspiracy was

proved; that he had done no act in conjunction with the sequestrator; that he had repaired to Graham's Town, in consequence of an order from the landdrost to take over the farm, and was there informed, that in consequence of subsequent orders, that proceeding was to be suspended, and a valuation of the improvements on the farm was to be made.'

Par. 25.---' The same defendant further contended, for the legality of his proceeding against the plaintiff, who had attempted to defeat the claims of just creditors, by making over all his property to one individual, and had thus exposed himself to the consequences of a declared insolvency; one of which was the avoidance of the lease, and of all right to continue in possession of the farm. A memorial was submitted to the court, on behalf of the sequestrator, that the lateness of the notice of trial precluded his attendance; and, independent of this circumstance, he contended that the plaintiff should have qualified himself to bring this action, by first obtaining a "*veniam agendi*," a form that is observed in the colonial courts, whenever a public officer of rank is summoned. The court, in pursuance of a power given to them by a proclamation of the year 1813, referred the cause to the decision of the full court.'

Par. 26.---' In an action for rent, brought by Hart, for the occupation of the farm, the sum of one thousand two hundred rix-dollars was decreed to be paid to him by Burnett, together with interest, from the 25th May, the day on which the lease expired.'

Par. 27.---' The next action was brought by Mr. Hart against Burnett, to recover damages for removing fruit trees from his farm, and for destroying two buildings that were standing upon it at the commencement of his lease, and the loss of the harvest of the current year, in consequence of the defendant having continued to occupy the farm beyond the expiration of it. After hearing the evidence, the court rejected the claim for damages, but compensated the plaintiff by allowing him rent from the expiration of the lease on the 25th May 1823, to the period of the defendant quitting the farm in the month of October. The plaintiff, however, was condemned in the costs of the action.'

After the decisions of the commissioners of circuit of 1822, which I attributed equally to their integrity, and a relaxation on the part of the Government of that persecution it had all along manifested, I began to breathe; and, as far as my crippled resources would permit, to renew my exertions upon the farm: confident, in my own mind, that the publication of my insolvency was illegal, and that I could maintain the proof of this before any impartial tribunal. I had ever regarded it as the result of a conspiracy, sanctioned by the colonial Government, to ruin me; and I determined, whatever schemes that iniquitous Government concocted, to oppose them with unabating courage and firmness. That it would confess its error, and revoke the advertisement, I had repeatedly and fruitlessly solicited; but I certainly did expect, after the circuit in 1822, that if any farther molestation was meditated, the whole of the proceedings would, in Hart's case, have been commenced *de novo*. A reference to my narrative will show the annoyances to which I had been subject from this man during the interval between the circuits; till, with my patience, at length, quite exhausted, I determined to bring matters finally to issue before the commission of 1823. I shall not fatigue the reader by conducting him through the entangled detail of the proceedings in that court, as those proceedings are appended, and from which he will be best enabled to draw his own conclusions, but I will state some facts to show the character of their justice, and whether any but a fool could have refrained from denouncing the utter disqualification of these commissioners to the Governor.

The action withdrawn in 1882, at the suggestion

of the court, now embraced Mr. Van der Rict, the sequestrator; and this I had instituted, not with a view to the recovery of the damages laid,—for that would have been a wild expectation indeed, at the Cape of Good Hope, if he had ruined me ten times over—but to bring the question of solvency or insolvency finally to issue. It was manifest to the court, as it must be to every sensible being, that if there were eight actions whose merits depended *entirely* on the issue of this one, that one not only claimed priority of hearing, but it became absolutely absurd, as well as unjust, to enter at all upon the merits of the others till it was disposed of. If I established my solvency, the whole of Mr. Hart's actions fell to the ground: he had no claim to dispossess me: he had no right to interfere with my proceedings on the farm: he had no title even for his rent; for as the proceedings with which he had harassed me emanated from Captain Somerset's injustice and breach of word, and the consequent illegal publication of insolvency; so far from his having claims upon me, I *had unquestionable right of action against both him and the sequestrator* for compensation for the heavy losses I had sustained from their aggressions. And yet how did this court act? I repeat, with an injustice and an absurdity that has no parallel: it disposed of the eight actions thus wholly dependent on the merits of this ninth, and referred that ninth for decision to Cape Town! Now, I will ask any man of common sense if this could be regarded in any other light than a virtual declaration of its fate in Cape Town, and consequently a palpable prejudication; for if its result proved favourable to me, what became of the

commissioners and their eight decisions! It may be naturally asked, what could be the motive of these two judges for a conduct so apparently unjust and inconsistent? I will tell the reader. They well knew that the object of my action against the sequestrator was, as I have before observed, to disprove my asserted insolvency, that if I succeeded in that object, both the sequestrator and Lieutenant-Colonel Somerset would find themselves placed in the most extraordinary predicament; and an imputation lie against the colonial Government of the foulest injustice and persecution. They knew that Lieutenant-Colonel Somerset was then in Graham's Town, and that the result of my exhibiting proofs of my claim upon the commissariat would vitiate the published insolvency, and decide the long contested battle triumphantly in my favour. They knew that all my witnesses to establish this claim were on the spot, and that, however instructed, and personally resolved they might be to crush me through judicial forms, the issue of this action was at least problematical, and not to be made exclusively dependent on their will and pleasure. In short, that if they found themselves compelled, however reluctantly, to give judgment in my favour, they would be doing that which no Cape judge ever had the temerity to do since Lord Charles Somerset has been Governor of the colony—*pronounce a decision at variance with his known wishes.*

In the 22d paragraph, the commissioners magnify a mere experimental suggestion into an effort of downright chicane, and in estimating the tone of the Report throughout, I particularly call the attention

of the public to this invidious tendency in these gentlemen to dwell elaborately upon trifles, however insignificant, if they can but be brought to exhibit my conduct in an unfavourable light. In discussing the measures to be pursued with Hart at the former circuit, Mr. Le Secœur, the district secretary, after a careful inspection of the lease, pointed out this very fact himself, that Hart had no claim for the rent annually which could be enforced by any one of its clauses; and that I could, with strict legality, resist his demand for it till the expiration of the first three years. That I had never given the lease this interpretation is manifest, from the fact of my having punctually paid the first year's rent, and tendered the second; nor should I have availed myself of this discovery, had I been at issue with a gentleman, or any other than a knave bent upon taking every advantage of me, and ruining me by litigation. As this plea then was not a disreputable evasion, but put in merely to defeat injustice, surely I was warranted in trying the experiment of its legality without meriting the imputation insinuated by the commissioners.

As the charge of dilapidating buildings, and removing fruit-trees, forms a prominent part in these proceedings, a reference to my description of the farm when I took it, will best show what ground it rests upon. The only building I found upon it, I left in its primitive condition; and where I took possession of one fruit-tree, there now stand ten of superior quality: these are facts the whole district can prove. I removed the trees from the orchard *of my own planting*, because the soil was too elevated. The house in the garden, also built by

myself, was irreparably destroyed by floods; and, to save the materials from being stolen, I had them taken to my own land, where I had built another house; and when I was compelled to abandon the farm altogether, I caused the doors and windows of the lodge to be removed from the same motive, but these were all my own erections, under the sanctity of the contract which made the farm my property for six years, or, if I pleased, for ever. The erections that had escaped the floods, consisting of the lodge, gardens, cottage, and charcoal kilns, the gates, palisades, and cattle kraal, were all left undisturbed, although constructed by myself; and to show the character of the valuation by Messrs. Reteif and Van Roynen, which was made prior to the destruction of the house in the garden, the lodge alone cost very nearly two thousand dollars when finished.

As to the nature of the proceedings, in their judicial character, I know no more about them than the man in the moon; nor, I believe, does any body else except the learned judges themselves; I can, however, safely declare that they excited universal astonishment throughout the district, for it had been generally expected that a full triumph awaited me in the result of this commission's proceedings. A magistrate, remarkable for his servility and cautious reserve, was so convinced of the injustice shown me, that he could not control his indignation, but frankly declared, as his unqualified opinion, that the decisions were all concocted, before trial, in Cape Town, and brought by these worthy Dutchmen, cut and dried, for the occasion Even the Commissioners of Inquiry, who now lend themselves to the cabal

against me, expressed their astonishment at the tenor of these law proceedings. Mr. Bigge described them as the most extraordinary he had ever heard of; that they were "ALL A HASH!" *a mass of incongruous and inexplicable absurdity; that mine formed one of many more brought under his cognizance, and that it was high time the whole judicial branch of the Colonial Administration was revised and purified. He expressed his decided conviction that I had been cruelly treated by Hart, to whom, he said, he had stated the same opinion; that Hart excused himself by professing ignorance of my claim upon the commissariat,* (a direct falsehood!) *declaring, that if acquainted with it, he should not have commenced his suit against me; and Mr. Bigge concluded his observation, by emphatically exhorting me to* "STICK TO THE FORAGE CLAIM," *as the only, but certain, means of defeating the plans in operation against me!!* But nothing of this appears in the Report, nor one solitary fact that can tell to my advantage!

> Par. 28.---'The defence to these actions was made by Mr. Bishop Burnett in writing, and was permitted to be read to the court. It abounds in violent invective against the Government and some of the public functionaries; and some passages were considered to be so calumnious as to induce the commissioners of the court of circuit to transmit the document to the cognizance of the fiscal; but it does not appear that any prosecution was founded upon it.'

The commissioners are again mistaken in putting me on the defensive, where I am the party attacking. The writing alluded to was *not a defence,* but an opening address to the court, in my capacity of plaintiff, previous to its entering upon the various

cases. They say, "it abounds with violent invective against the Government and some of the public functionaries." I admit that it does; and I intended that it should, for they richly deserved it; and it was for this very purpose I wrote it, that as a recorded document, not liable to falsification, the parties glanced at should not escape one single lash of the intended castigation. As this, however, is not the first time I have been charged with the use of violent and intemperate language in the course of this struggle, it may be necessary to examine into the justice of the reproach. The earlier portions of my correspondence with the colonial functionaries are characterised by a style and language, I will venture to say, strictly becoming; when the aggressions of the Government were remorselessly followed up, that language necessarily assumed a more forcible character; and as these ripened into a system of intolerable persecution, so my remonstrances became correspondingly energetic; as they continued beating me, so I cried out; and at all times with the nicest reciprocity between the force of their cudgels and my clamour. So far from regretting this, I glory in it; and, if it was to obtain a princedom, I would not "bate them one particle of their addition." In the estimation of the commissioners, "that in the captain is but a choleric word, which in the soldier is flat blasphemy." So that, because the parent of all this injustice is a duke's brother, I am to bear the cruellest inflictions without retaliation! a principle as ridiculous as that which would restrain the mechanic in the street from calling out "stop thief," because he had been knocked down and robbed by a well-dressed pick-pocket. If I wanted to extenuate my conduct

in this respect, surely it will be admitted, that as counsel, conducting my own cause, my language was temperate in the extreme, compared with the latitude assumed and sanctioned on such occasions.

Par. 29.---' When the trials were concluded the memorials of certain creditors of Bishop Burnett were heard, complaining of the delay in executing the sentences they had obtained against him; and, in one of them, a charge was made against Burnett of having committed acts that were in fraud of his creditors: the court of circuit ordered that Burnett should again be summoned to give an account of his property to satisfy the demands of his creditors, and that in failure thereof an inventory should forthwith be by the landdrost, and forwarded to the sequestrator. The charge of fraud that had been made against him was committed to the inquiry of the landdrost and hemraaden.

I have so little taste for notoriety, and am so averse to intrude myself upon public notice, that, in all probability but for this, and a supplemental paragraph, I should, in my thorough conviction that Governments never redress grievances, have declined replying to this Report altogether, and suffered the known design of the Colonial Department, (the rescue of Lord Charles Somerset from the awful precipice he stands upon, at the price of my sacrifice,) to have succeeded; but these parts of the Report have left me no alternative, and I now pledge myself to the country never to relax in my determination of laying before it a complete detail of Lord Charles Somerset's administration at the Cape of Good Hope. So infamous a combination against me shall not succeed, and if his Lordship must be upheld by power, because he is brother to the Duke of Beaufort, and, probably, a life charge upon his rental, and thus, in

his own vernacular idiom, "walked over the course," it shall not be at the expense of my character.

The aim of the above paragraph is, evidently, to establish an opinion, that, in the assignment of the property to Mr. Eaton, and subsequently, I have committed acts of such fraudulent appearance as to require judicial investigation, and the commissioners by invidiously omitting any notice of their merits, but rather assuming them as recorded than imputed facts, have committed the foul injustice of ushering a lie to the world, in the garb of truth, *knowing it to be one at the time;* and I am quite sure that when I have exposed the utter fallacy of this charge, the indignation of the country will keep pace with my own at the infamous motives in which it originated. If we turn to that part of the Report, replying to my insinuations in the petition to Parliament, as respect the Somerset farm monopoly, and his Lordship's interference with the exchanges, we shall find the Commissioners floundering through a laborious purgation, and bestowing much toil and research for the means of repelling them; but here, on an accusation that places my moral existence in jeopardy, the charge is insidiously foisted into the Report, without one line of explanation of the ground it rests upon, so that its poison may circulate through the world, unaccompanied by the antidote *they know* that truth and justice could supply. What have I done to merit all this rancour? I was never blackballed at a Bibury meeting, nor held a pollution and a disgrace among the *legs* of Newmarket; I never juggled mortal man in a bargain, or fleeced the extravagant and unwary; I never was addicted to horse-racing, or cock-fighting, or slurred, or cogged a die; nor

ever did I pander to my cupidity, or my lusts, through the medium of audacious public spoliation, or sneaking private delinquency; and yet every little action of my Cape life, that can bear record to misfortune or imprudence, is to be alike raked up for public examination, and distorted by the most tortuous ingenuity, into grounds of crimination and abuse.

To give the public a competent idea of the full infamy of this proceeding, it will be requisite to show the precise situation I stood in at the time this accusation was brought forward. I had all along maintained the illegality of the publication of my name as insolvent, and the proof of my claim upon the Commissariat even the Commissioners have confessed will decidedly bear me out. Acting on this conviction, I still went on in my concerns as heretofore—purchasing articles for the support of my establishment, and disposing of its little produce: *all this was notorious in the face of day, and authoritatively confirmed and legalized by the first ensuing commission of circuit in* 1820. In this way I proceeded till the arrival of the next commission, unconscious of even error, much less that the purchase of every article for the support of my family, or the sale of every load of bark or timber for the means of that purchase, were to be hereafter adduced as acts of wilful premeditated fraud! instead of being exhibited to the world in their true colours as the indefatigable exertions of a man to relieve himself from embarrassments, produced by the persecution of that Government from which he had most right to expect indulgence and support. When the landdrost sent for me to hear this declaration of insolvency propounded, what was my conduct? After requesting

his advice, and receiving his instructions, I went home, abandoned every proceeding upon the farm, discharged all my people, and waited the issue in patience. But when the sale was suspended, and the secretary, in accounting for it, informed me that Messrs. Ebden and Eaton had undertaken to arrange with the sequestrator, I renewed my operations with my usual activity, crippled and hampered as they were by this afflicting interruption. Why did not the landdrost then tell me that if I bought a bag of rice to feed my people, or sold a stick of timber from my land, that I should expose myself to a charge of *fraud!* or months afterwards, when the commission of circuit publicly exonerated me from any responsibilities incurred by this illegal and scandalous publication, why was I permitted to go on twelve months longer, in the daily commission of acts intended to be made *fraudulent* without warning or information? Why was it not at once declared to me "The commission of circuit has asserted you not to be insolvent, and that you are as free to act in your own concerns as any other man, but the Government thinks proper to decide otherwise, and the next commission will decree accordingly; so that you will render yourself liable to a charge of *fraud,* if you receive or pay one rix-dollar, although for the support of your existence"? Nothing, however, of this sort was done: on the contrary, *the Government, by its own act, holds all the proceedings from this publication in abeyance for a period of* TWENTY MONTHS, *deludes me by an insecure appearance of having acquiesced in my protest against its injustice; and then, for every act of sale or purchase I may have committed during this long interval,*

*it holds me up to the world as* FRAUDULENT!!! If this is not persecution, and of the foulest character, I am unacquainted with the meaning of the word; and if there is no other circumstance to brand with indelible disgrace his Majesty's commissioners of inquiry, who have so nefariously abetted it, this fact alone will be sufficient in the estimation of every honourable mind.

Thus, then, I continued, unconscious of the commission of any offence against the laws, though grievously oppressed by their abuse, till the arrival of that commission of circuit for denouncing whose monstrous injustice to the Governor I have been banished the colony. On the first morning of their sittings, it was communicated to me, that Hart, and a shopkeeper, named Stone, had been repeatedly closeted with the commissioners; and my informant even then suggested the existence of some plot intended for fruition during the trials, but of what nature he could not determine; nor had I, from this intelligence, the slightest suspicion of its character or object; but, as I felt satisfied neither truth nor justice could defeat me, my Cape experience sufficiently justified me in some apprehension of conspiracy and fabrication. Conspiracy it turned out, and as this Mr. Stone was the prominent agent in its conduct, I must state some few particulars respecting him. He kept a shop of general chandlery in Graham's Town, whither, in the want of coffee-houses, the respectable portion of the settlers and military used to resort; and, after a considerable course of dealing with him, he claimed a balance against me of six or seven hundred rix-dollars. His affairs were at this time in the hands of the sequestrator, and the chandleries he sold

in Graham's Town were ostensibly for his brother. He had acquainted me with some very vindictive expressions used by Hart; and, on one occasion, wrote me a letter detailing these, and giving his opinion of the character of law proceedings with considerable license. I considered his evidence necessary to prove Hart's expressions of animosity, and had him summoned in my behalf. To the first question I put to him he replied that he did not think he was under any necessity of answering it, as I was a bankrupt, and added, on my expressing surprise at this assertion, that I was not only a bankrupt, but a fraudulent one. I repressed my indignation at this infamously false charge, and contented myself with requesting the court to record it, which was done. On the next morning I exhibited the following paper in the town, and wrote the secretary to enter an action for libel against Stone before the ensuing court of landdrost and hemraaden. It is true, I might have retorted upon this Stone, that *he* certainly was disqualified from maintaining an action either at the Cape or in England, for he was not merely under sequestration in the colony, but an *uncertificated bankrupt at home*, where he had failed for a considerable amount, without even paying a *fraction of a farthing in the pound!*

PAPER EXHIBITED IN GRAHAM'S TOWN.

The commission of circuit having left Graham's Town without giving the undersigned an opportunity of repelling the slanderous accusation of Charles Stone, the shopkeeper, the public is requested to suspend its judgment upon this occasion until the issue of a prosecution to be instituted thereon is known.

The undersigned, in the mean time, must so far vindicate himself, as to declare that the accusation of the said Stone is a

wicked, malignant, and atrocious lie; which he firmly believes Stone was induced to propagate from having been bribed thereto, or from the hope of ultimate patronage.

B. BURNETT.

Graham's Town, Nov. 12, 1825.

With the charge itself, or any consequences likely to flow from it, I never troubled myself in the least, and it was treated by the public with the utmost contempt and ridicule, quite satisfied that it was the result of a conspiracy to gratify the supposed hatred of the Government.

As I absolutely required some little relaxation after all this toil, I hinted a desire to Mr. Rivers, the landdrost, to pay the Caffres a visit, who very kindly offered me his pass, and promised, at my suggestion, to get it countersigned by Lieutenant-Colonel Somerset, as commander on the frontier; this, however, was refused by Somerset, whose example was followed by the landdrost, which occasioned me to abandon the design of crossing into Caffre-land. I proceeded, however, with a small party to the neighbourhood of the Great Fish River, in search of elephants, and returned to Graham's Town, after a few days' excursion, without having passed the boundary of the colony. It had, however, during my absence, been reported otherwise; and to show the malignant temper of the Government towards me, the following post from Cape Town brought a proclamation from his Excellency, reviving one half a century old, by which this offence was made punishable with death. While I was away, the investigation of Mr. Stone's charge had been proceeded in by the landdrost and hemraaden, and then, for the first time, I ascertained its true character, that all of a sudden I became *fraudulent* for doing what I had done in perfect in-

nocence, and without molestation, during the whole period from the publication of the insolvency, viz. buy, sell, and exchange. Why they selected the specific articles stated in the Report, will be seen, as I had bought and sold hundreds of cattle, immense quantities of fuel, and received from my tanner a great number of hides and skins in exchange for bark; and surely if I was acting illegally in the last of these twenty months, I was doing the same throughout the whole period; but Stone and his advisers knew if they generalized the charge, it must carry with it the principle on which it was founded, and thus expose its own infamy and absurdity; they wisely therefore selected but two or three instances, that by thus giving them an isolated appearance some peculiar features might be supposed to attach to them. The case of the hides, for instance, strikingly illustrates this: I had taken a hundred tanned hides from my tanner in exchange for bark, and had exchanged them again, subject to the price they fetched in Cape Town, with a Mr. Smets, of Algoa Bay, for articles of consumption on the farm; with no more idea that I was doing wrong, or subjecting myself to a charge of fraud for so doing, than I have for writing this very sentence. These hides were consigned by Mr. Smets to his correspondent in Cape Town, and laid there unsaleable from damage; and under the impression that they were thus delivered by the tanner, I entered an action against him for the recovery of their value, which was only withdrawn on discovering my mistake. Nor was it till the necessity of perfecting this plot against me for the use of the Commissioners of Inquiry occurred to them, that those hides were ever thought of by the sequestrator, who then incon-

tinently seized them in the store, where they had been peaceably rotting for months; and doubtless with very imposing formalities. But what would be the natural inference from the way in which this is stated in the Report? What, but that it was some secret smuggling transaction, under precautions to prevent discovery, which the vigilance of the sequestrator had detected and defeated? And yet this is the Report of *honourable* men, highly eulogized in Parliament, and paid enormous salaries by the public, to give that public just and impartial information! but I will tell these gentlemen that they have executed their mission, as regards me, with the foulest injustice, and the grossest partiality.

Having now stated the grounds of this accusation of fraud, which, in the very worst light my enemies would desire to put it, is a most invidious misapplication of a term, as the notoriety of all the acts from which it emanated must prove that they could bear no other construction than that I was acting in error, I shall show that it never could apply to me, or admit of the *slightest* degree of proof, and that, consequently, it has only been projected to injure my character, and attach a disreputability to my case. The commissioners foresaw that their Report, divested of this poison, however laboriously worded to my prejudice, would still disclose sufficient persecution to excite public sympathy in my favour; but to impress upon that public that I am a turbulent, disaffected, and dishonest character, was at once to destroy this feeling, make the whole community callous to my complaints, and render my case altogether unworthy of the notice of Parliament: but, thank God, I can expose this infamous conspiracy, and frustrate its

object, for I again pledge myself that Lord Charles Somerset shall not "walk over the course" at my expense.

Although I was glad to avail myself of this mode of defeating Hart's manifest determination to bring my property to sale, its original assignment to Mr. Eaton did not originate with me, as the following letter will prove:

My Dear Sir, Cape Town, August 31, 1820.

I have to acknowledge the receipt of your letter of the 22d instant.

I can assure you I have no wish to subject you to inconvenience or disadvantage by pressing immediate payment, and as that cannot probably be accomplished without both, I shall be very happy to wait three months, if you have no objection to give me security, and which I should propose to you in this way: to give me a bond for the amount of my account, and covering the bill, of which we have as yet no advice; for although I did not remit that bill, I indorsed it. And that you should grant us a mortgage of the land granted you by the Government; this can be done at a very little expense and trouble, by Staedel, the secretary to the district, to whom I have requested my legal friend here to write on the subject. He is merely informed, that advances have been made you, and that the security in question is required.

I feel confident that you will make no objection to this proposal, since you will readily acknowledge that security for the advance of upwards of £500, is not an unreasonable request. The bond may be made payable three months after demand. Believe me, my dear Sir, faithfully yours,

R. W. Eaton.

B. Burnett, Esq., Graham's Town.

By this it will be seen that the assignment was not a matter of choice, but of necessity, contrary to the light in which the commissioners represent it, as a transfer of property to one creditor in prejudice of the others; while, to show how palpably they commit themselves, in their zeal to inculpate me, *I*

*had no other creditor in the colony at the time but Hart*, and *his* claim had no *bona fide* existence till the expiration of the twelvemonth's credit. Whether this constant prejudice in the commissioners is traceable to a purpose originating in others who have misled them, or to themselves, is quite immaterial, for their ostensible function is to investigate and report with justice and impartiality; and this they have not done; *no, not in any one paragraph out of the eighty-nine of which their Report is composed.*

The legality, integrity, and object of this assignment being shown, and the basis of the charge of fraudulent conduct, it only remains to prove that if the act of the Government itself, in leaving me plunged in this dilemma for a period of twenty months, did not virtually exonerate me from such an imputation, which every just mind will say it does, it has no manner of existence in fact, from the actual position I stood in. First, I was not insolvent at the period of such declaration, although that declaration proved the cause ultimately, of what, in justice, it should have been but the effect. And secondly, if insolvent, I was authorised by Messrs. Ebdon and Eatons' power of attorney to act for them entirely at my own discretion. How, then, could my carrying on the ordinary operations of the farm, selling cattle, bark or timber, and buying produce or necessaries in return, merit the odious appellation *fraud?* I was compelled to retain people to supply the means of existence, and was compelled to barter and exchange for the supply of their food and wages; and, God knows, *fraud* or not, I reached Cape Town without a single dollar in my possession, although, sceptical as his Majesty's commissioners are, I had spent up-

wards of twenty thousand upon the farm during the first year of my occupancy. Nothing, therefore, can surpass the infamy of this charge as concocted by the bankrupt Stone,—as entertained by the functionaries, who conspired with him to give it shape and plausibility,—as adopted by the Commissioners of Inquiry for a point worthy of investigation, or as insidiously recorded in their Report, and that without explanation or comment.

This is not the first time I have had occasion to notice the omission in the Report of any thing favourable to me, nor during the course of my answer will it be the last by many. The most trivial exhibits, if they convey a line or a feature to my disparagement, are industriously foisted in; but this Stone's letter, although an unimportant piece of documentary evidence officially lodged with, and detained by the court, is as carefully omitted; why this should be so, would, I am sure, be a superfluous question to the public.

It must be the opinion of every unprejudiced person, that a charge of this nature required the promptest decision upon its merits, and that every principle of justice prescribed the earliest publication of such decision, especially where no plea or justification exists for the least delay; and yet how have I been treated in this respect? The same interminable procrastination that characterises every proceeding in which my interests are involved is found lingering in this. The Board of Landdrost and Hemraaden were deputed to investigate it, which they immediately did; three or four persons were examined as to any dealings I had had with them, and deposed to having purchased of me cattle and fuel. Here the case

closed on the very spot where it originated, and here, with any regard to justice, the issue should have been pronounced; nothing could be more simple. If the sale of such wood and cattle was legal, I ought instantly to have been relieved from the obloquy of imputed fraud; while, if it proved illegal, little doubt exists but that the severest punishment the whole colonial code could inflict would have been dealt to me with no unsparing hand. What then, is the fair inference, but that the Government, with all its determination to crush me, felt ashamed to adopt a mode as iniquitous as it was untenable? But let us suppose, for argument's sake, that the Board of Landdrost, &c., were not qualified to pronounce its decision, and that some colonial form placed its cognizance and promulgation with the court of justice, or even with the high court of appeals, Lord Charles Somerset himself,—whence this delay, from October 1823 to December 1825, *nearly two years and a quarter?* Now, is it feasible to suppose, that with the known hatred in which I am held, by the very functionaries before whom my character has so long laid prostrate, that if any practicable ingenuity, any obliquity of legal application, could have sanctioned the blow, they would not long since have given it the *coup de grace?* Was it not, too, incumbent on the Commissioners of Inquiry to have demanded this decision, and have accompanied their Report with my perfect exoneration from this detestably lying accusation, or contrariwise, and not have circulated through the world an insinuation to my moral prejudice, resting upon the ex-parte assertion of a malicious chandler shopkeeper, whose conscience was the easy purchase of *Hart's promised pa-*

*tronage*, and some *orders for military clothing for the Cape Corps?*

There is another feature of this infamous conspiracy which must not be overlooked, for it is in tracing their reflection of light upon one another that we arrive at the just conclusion. I have mentioned the institution of a criminal process against this Stone for slander. The Commissioners of Inquiry were then in Graham's Town, and I related to them every particular now given to the public; they *expressed their sympathy* for the cruel predicament in which I was placed, and Mr. Bigge stated some doubts as to the court's jurisdiction in cases of libel, although not entertained by itself; they, however, decided to be present at the trial, and sent a request to be called when it came on. On the day appointed, through a *professed* omission of the secretary, it was not inserted in the list of causes. I remonstrated on this neglect, and obtained an assurance that it should certainly be brought on at the next sitting of the court. This, however, passed over with the same neglect, and I began to suspect not without design. I accordingly wrote a strong remonstrance to the district clerk, and was informed by him, on the following day, that the whole of the papers connected with the prosecution *had been stolen from his desk*. This very suspicious circumstance induced me to write, as follows, to the landdrost:

DEAR SIR, Monday, 8th March.

It would give me much pain to cause Onkruydt any uneasiness, or, in short, to make a new complaint of any kind; but, in the event of Stone's papers being lost, something must be immediately done to extricate me from the extraordinary predicament I am placed in.

I can perceive that the commissioners will take much of their tone (in estimating such parts of my grievances whose proofs rest mainly upon my probity) from the result of this prosecution; and I also know that Stone is very capable of turning the tables upon me, and attributing this delay to me. I must, therefore request, that with or without the mission papers, the trial may proceed.

I could wish you to name to-morrow, or Wednesday at furthest, because it is then my intention, under the urgency of the case, to apply formally to you, that a final court may be specially convened, to bring this matter to a conclusion before I quit the frontier.

I have satisfied myself that the original placard is not wanted; I have an authentic copy, with abundant evidence to prove it so. Yours truly,

B. BURNETT.

Harry Rivers, Esq.

And then, for the first time, comes the following intimation, that the cause, *as Mr. Bigge had supposed,* was *not* cognizable by the local court!

Sir, Graham's Town, March 11, 1824.

In reply to your inquiries, urging me to bring forward your case, *versus* Charles Stone, I have to acquaint you that I do not consider it such as is cognizable by the Board of Landdrost and Hemraaden; and therefore regret I have it not in my power to prosecute the case further. I have the honour to be, Sir, your obedient servant,

DANIEL J. CLOETE.

B. Burnett, Esq.

This singular coincidence will not escape attention, while it strikingly illustrates the caprice and uncertainty prevailing throughout the Cape judicatory. Actions for slander are entered and tried before a local court, no doubt of its jurisdiction ever having arisen; and penal sentences, the results of such trials, are enforced upon the culprits, (as in my own case against a relation of Hart's, who was banished the

district for life.) A prosecution is then commenced, involving no less an issue than the vindication of my character from the slanders of a conspiracy; but which the Colonial Government have powerful motives for keeping in action and operation: when procrastination can be no longer maintained with any regard to decency, *all the documents of the suit suddenly disappear*; and when it is found that this *unfortunate loss* projects no real impediment to the progress of the trial, the court, for the *first* time during the long period of its existence, and in singular unison with the learned commissioners' opinion, *finds that it has no jurisdiction!!!*

> Par. 30.—'Against all these decisions, except the last, Bishop Burnett entered appeals; but, instead of prosecuting them before the High Court of Appeal, he transmitted a memorial to the Governor, charging the two commissioners of circuit with gross ignorance of their judicial duties, and with corruption, partiality, and injustice.'

There is a trite old adage which says, "Never show your teeth till you can bite;" which, I presume, means, never attack an enemy till you have thoroughly estimated his powers of resistance. If the Commissioners of Inquiry had followed this rule, they would either have transmitted a more *careful* Report, or none at all; for abstractedly, from its too palpable design of crushing me, which its over anxiety betrays in every line, its compilation is careless and slovenly in the extreme; and nothing can tend more to throw the whole into disrepute, than a repeated utterance of useless and supernumerary falsehoods.

I appealed against *all* the decisions *without excep-*

*tion*; and had any of them been pronounced in my favour, I should have done the same and this upon principle; for, from the monstrous partiality and glaring ignorance of these judges, I held them, as I stated to his Excellency, *morally disqualified* for the discharge of the sacred functions intrusted to them. An appeal to the High Court of Appeals, as stated by the commissioners, I never contemplated for a single instant—it would have been a proceeding at variance with the judicial forms of the colony. The routine is from commissioners to the full court, and thence to the High Court of Appeals; and for me to have overstepped the intermediate tribunal to approach a court I could not even glance at without shuddering and horror, would have been madness indeed. What constitutes the High Court of Appeals? The reader will readily supply the answer. A body more profound in the science and practice of jurisprudence, more responsible in its constitution, and more imposing and august in all its elements than the courts below. No such thing. The High Court of Appeals at the Cape of Good Hope, is Lord Charles Somerset himself! very Lord Charles!! A general officer, no doubt, from his age and *experience*, well versed in military tactics; and, confessedly, the best judge of horse flesh in, or out of, his Majesty's dominions. This then, it appears, was the court I was to appeal to from unjust judgments, pronounced by men who thought they were best propitiating this same *military jockey judge* by these very judgments.

Par. 31.—'Shortly after the proceedings had been concluded, the sale of Burnett's property took place, and produced the sum of four thousand five hundred and fifty rix dollars, which was given for the grant of land that was conferred

upon him by the acting Governor: a great part of the personal property had been disposed of by Burnett himself, between the period in which the first inventory was made, and the conclusion of the proceedings by the commission of circuit. In the same interval, also, very heavy storms of rain had occurred, by which the improvements that he had effected upon the farm, and in the garden of Mr. Hart, had suffered great injury; and one of the houses, that had been injudiciously placed near the course of the river, was destroyed.

The sale of the property was conducted in the most scandalous and disgraceful manner: indeed, its whole conduct was calculated to impress the public with a belief that the sequestrator, far from wishing it to obtain its value in consideration of the interests of all parties, was desirous that it should, like its owner, be sacrificed. The customary period of notice was abridged, and although, from its contiguity to the town, it was universally considered a very desirable property, and hundreds had expressed their intention to attend; only *nine persons were present at the sale, and only two bidders!* It was my earnest desire, as well as the wish of all present, that it should be sold in two lots, as best suiting the capacity of the purchasers; this the secretary would not allow; and thus, by juggle and sinister proceeding, property, for which I had been offered 30,000 rix-dollars, and professedly undervalued by assessors at 15,000, as justifying a loan from the Lombard Bank, was sold for 4550 rix-dollars.

The assertion that "a great part of the personal property had been disposed of by myself, between the period in which the first inventory was made and the conclusion of the proceedings by the commissioners of circuit," is decidedly *false*. It has not even the

shadow of a foundation to rest upon. The variance between the inventory taken by Mr. Onkruydt, the district clerk, on the 9th May 1822, and the one after the close of the proceedings, was occasioned entirely by the flood; some idea of which may be formed from the following letter to the landdrost:

Sir, Farm, October 13, 1823.

In the recent calamity, I have participated to an extent, which makes a communication to you, as chief magistrate of this district, indispensable.

What little property remained to me, after the continued series of misfortunes and persecutions I have experienced in this colony, is nearly all destroyed—either irreparably injured by the waters, or carried away altogether; and my family are now left destitute of food, clothing, or a habitation to dwell in. I have not yet been able to ascertain the precise amount of my loss, but, as far as I can at present form an opinion, it cannot, in the aggregate, be under 5000 rix-dollars.

You will be able to form some conjecture of its amount, when I acquaint you that the water rushed in a torrent through the house, to the depth of four feet, bearing away all before it. Two walls were beaten down by the force of floating chests, displaced doors, and various other articles which were carried away with the stream. Of the few things saved, what could sustain damage from mud, water and fracture, are quite ruined. Mrs. Burnett has not one change of apparel left.

The house is too ruinous for repair; another building opposite is entirely levelled, most of my fruit-trees, obtained at great expense, even from Cape Town, are swept away, or torn up by the roots. The garden upon the farm, created at a vast expense, is laid in ruin. Two highly cultivated acres of Indian corn are destroyed, and, in short, the whole of my premises is a scene of damage and desolation.

In this condition, I have no resource but a formal application to you for a temporary assistance, until the communication I shall forthwith make to the Government can receive an answer. I have, therefore, to request that, under the circumstances, you will be pleased to order me a loan of two or three hundred

dollars from the district chest, or such fund as you may deem most expedient.

I wish you to believe that, as I should decline receiving a favour from this Government, it must be on very urgent grounds I should prefer an application of this kind. I am, Sir, your obedient,

B. BURNETT.

To the Landdrost.

But if it was even otherwise, the real difference, on reference to the schedules, though so pointedly marked by the commissioners, will be found so comparatively trifling as to convince the public that none but predetermined minds could be so sedulous in a paramount object.

Par. 32.---' We have been induced to enter thus minutely into the circumstances of these proceedings, as Mr. Burnett has made them the principal ground of his complaint, both in this colony and in England, and the pretext for a very violent representation to the Governor, for which he was called upon to answer criminally before the court of justice. In his first complaint, he adverted to the vindictive spirit by which Mr. Hart was actuated in compelling payment of his claim for nine hundred rix-dollars, and his attempt to appropriate to himself the improvements he had made, and was making, upon his farm. If it were necessary to seek a justification of this proceeding, on the part of Mr. Hart, it might, we think, be naturally found in the very questionable transaction that has in fact, as well as in law, been the cause of all Mr. Burnett's difficulties. After his drafts upon England had been publicly declined at Cape Town, and after he had incurred debts to two individuals for the means of cultivating his land, he made an assignment of all his property for the purpose of securing a particular creditor, and avowedly for that of defeating the just claims of others. He further states, that an attempt was made by Mr. Hart to obtain possession of the land contiguous to his farm, that had been granted to him by the Government, and has complained of the injustice of making it liable to execution,

> when the grants of other settlers were not liable until the expiration of three years, at which time they were to receive their titles. Mr. Burnett forgets, however, to state, that he received the title to his grant at the expiration of the first year, at the solicitation of the creditor to whom he very soon after assigned it, for the twofold purpose of enabling him to give security for the advances that had been made to him, and to protect the property from the claims of others; he justified this proceeding, we observe, by a reference to the preferential nature of the debt, in which we can by no means concur. The debts for which he was pressed by Mr. Hart and another creditor, arose from the supplies of cattle and stock, by which he was enabled to cultivate his farm, while the debt of the commercial firm consisted partly of a pecuniary advance made to Mr. Burnett on his arrival in the colony, of furniture for his house, and of a certain quantity of tea, which was evidently intended for the purpose of retail, or commercial profit in the district.

That part of the above paragraph, sufficiently discussed in my commentary upon the preceding ones, I shall pass over; and very little pains will be requisite to show that the remainder is half distortion and half falsehood. I have before alluded to Mr. Hart's vindictive feeling towards me. When the causes promoting this are borne in view, operating as they did upon a low, illiterate mind, arrogant from lucky speculations, and intoxicated with subaltern authority, the degree of that feeling will be easily imagined. The commissioners, in alluding to the security given to Messrs. Ebdon and Eaton for their advances, invariably ascribe it to a sinister motive, and then draw inferences from a position that never had existence but in their own imaginations. This is perceptible through every paragraph of the Report. They set out with false premises, but always such as furnish

deductions to my disadvantage; these they work up into some postulate subservient to the grand purpose, —saddle me with the consequences, and then call upon the public to judge me accordingly. If the promulgation of so much untruth could be palliated on the pleas of mis-information or inadvertence, I should be content to set the matter right without much complaint of the consequences to myself; but when a motive, and a most disgraceful one, is traceable throughout the adoption of such continuous falsehood, its exposure and its marked reprehension become a duty both to the public and myself.

In this paragraph, Mr. Hart's vindictive proceedings are justified in the transfer in question; which is described as an act to defeat the *just* claims of other *creditors*. Now, all this is mere prattle, with no manner of foundation but in the special pleading-brains of Mr. Bigge, his Majesty's commissioner. The assignment, however inadmissible by the laws of this country, was a *bona fide*, legal, and customary act at the Cape. At the period of its execution, I had *no creditors*, inasmuch as Hart was the only claimant upon me in the colony. If this plurality is formed from the circumstance of his transferring a portion of my debt to a Mr. Devenish, I still, as I ever have done, dispute his right so to do. The date of Mr. Eaton's letter is the 31st August, and it was not till the end of the same year that I succeeded in getting Mr. Bennett's account, before which I had not the most distant idea that I was *his* debtor; then what becomes of his bold assertion and all the odium it was intended to generate? Surely it "must return to plague the inventor." I will now briefly sum up the true causes of Hart's hostility.

During the period of my abode at the house of Mr. Bennett, I advanced him 5500 rix-dollars, not without cautions from Cape Town, and various persons in the Albany district, that it would be necessary to look sharp; and my own observation soon discovered that his affairs were desperately embarrassed. It became, therefore, prudent to take what supplies his store yielded for the service of the farm. I was at this time excessively occupied, and paid too little attention to the state of our account, which, under various pretexts, he delayed to furnish. When, at length, it was presented, I found, to my utter astonishment, that instead of having a balance coming to me, I was brought in debt about 2000 rix-dollars, every article was so exorbitantly overcharged, and the receipt of great numbers altogether denied by my servants. During the progress of these deliveries, Mr. Bennett had sent some goods, in value about 200 rix-dollars, to the farm, with a request that I would give them store-room, and they laid there to the period of his failure at the latter part of the same year; he had also lent me some articles of furniture, not at the time procurable on the frontier. It was at this juncture that the exposure of Hart's conduct, in the affair of Captain Ellert, had excited his bitterest animosity; and as Mrs. Bennett was sister to Hart's son-in-law, a Lieutenant Stretch, the whole family, with all their connexions, united in arms against me. Mr. Bennett's estate was now under sequestration; but he made an application to me for the few articles alluded to as lying at the farm, which I gave instructions to be delivered to his order. It will scarcely be credited, that on the following day he laid a complaint before the district secretary, accus-

ing me of retaining these articles, and I was summoned before Captain Somerset, the landdrost. I met the latter as I was proceeding to the court-house, and had some conversation with him on the subject; when he intimated a desire that during the examination of this charge, I should call upon him to give evidence. As soon as I had thoroughly disproved it before the court, I called upon Captain Somerset in obedience to his suggestion, who immediately left his magisterial seat, and deposed that this Bennett, accompanied by his brother-in-law, Lieut. Stretch, had charged me that morning with having taken away *waggon loads* of his, Bennett's goods, and kept them at the farm. The exposure of this vile conspiracy was so instant and so complete, that Bennett, in an agony of apprehension, sank upon his knees, confessed his guilt, and implored my forbearance; but his ingratitude was so flagitious, and the horror inspired by his conduct so great, that Captain Somerset insisted upon justice taking its course, and Bennett was banished the district for life; and Mr. Hart's son-in-law would have shared the same fate, as *particeps criminis*, if I had been so minded. If the reader connects this transaction with his own exposure in the affair of Ellert, and his rankling disappointment at not having obtained my grant of land; adding to it some slight scratches upon his self importance, in the shape of a few expletives I was sinful enough to utter against upstart serjeants, he will soon arrive at the true cause of Mr. Hart's animosity. The following letter from one of the magistrates will show the opinion entertained of Bennett's conduct:

My Dear Sir, 12 o'clock.

I am exceedingly obliged to you for your information respecting the goats. I shall not fail to send a man this evening to your house. I suppose there will be no difficulty in obtaining them, as your man can identify them.

Most sincerely do I congratulate you on your triumph over so foul a conspiracy. I really never knew any thing more atrocious. I understand your forbearance was even greater than I was then aware of.

If no unforeseen accident prevents it, I purpose having the pleasure of accompanying Mrs. Campbell to your cottage early next week. Yours very truly,

D. Campbell.

B. Burnett, Esq.

It is amusing to see the dexterity with which the commissioners persevere in error: they must have estimated my capacity for resistance at a very low scale, or lamentably overrated their own oracular pretensions to credence. The nature of "the very questionable transaction" is now before the public, and there is nothing questionable in it; nor has it "in fact" nor "law" been productive to me of a single difficulty; on the contrary, it has proved the palladium of my resistance against oppression and persecution for a period of six years, and I owe to this single circumstance the final triumph which *inevitably awaits me,* the redemption of the Cape of Good Hope from the iron rule of Lord Charles Somerset, and the full exposure of the true object of the Commission of Inquiry sent out to scrutinize his conduct.

The remainder of this paragraph is one continued distortion of truth. I complained of the earlier perfection of my title to the grant, merely because I suspected it had been done with a sinister intention, nor was I at all acquainted with the fact till Mr. Eaton

apprised me of it by letter, dated 14th Dec. 1820, or that I had any pretension to expect it before the settlers had theirs; so that in assigning it, the commissioners charge me with motives, "the twofold purpose of enabling me to give security for the advances that had been made me, and to protect the property from the claims of others," *which could not by possibility have existence!* As to the commissioners withholding from it their concurrence, I have nothing to say, their approbation or disapproval can have no influence upon the merits of a transaction sanctioned by, and only amenable to, the laws of the colony: that they are anxious it should be otherwise is tolerably evident from their avowed anxiety, during a conversation with Mr. Eaton, to judge it by the laws of England, while, with the same breath *they approve my condemnation and banishment for libel by the laws of a nation extinct from the face of the earth!* In the last period the facts are totally reversed, for the cattle purchased of Mr. Hart had no instrumentality in my proceedings on the farm beyond drawing the ploughs, while *the whole of Mr. Eaton's advances were exclusively appropriated to the maintenance of the people employed in its cultivation.* The tea was certainly intended for retail profit in the district, *but not by me;* nor ever did I derive the slightest advantage from it. As it arrived so was it received by Mr. Bennett, *at its original prime cost in Cape Town,* without one farthing of profit accruing to Mr. Eaton or myself; and the amount of my credit for it was taken entirely in articles for consumption upon the farm.

Par. 33.—'Mr. Burnett alleges, that he had expended the very considerable sum of twenty thousand rix dollars upon the

> farm of Mr. Hart, and that it was an act of great injustice in him to attempt to appropriate such a sum to himself; but it is necessary to observe that the improvements that were made by Mr. Burnett were not such as to increase the value of the farm in the opinion of a practical settler, nor were they made with the knowledge and consent of Mr. Hart, the landlord. The rustic lodge that he built was a fanciful structure, and the garden was laid out more with a view to embellishment than to profitable cultivation. The number of fruit-trees, however, was greatly augmented, and some pains were taken to select the best kinds.'

Three items will establish this fact. The advances of the firm alluded to by the commissioners amounted to 1040*l.*, Bennett's account, exclusive of tea and drafts on Mr. Eaton, was 600*l.*, and Mr. Eaton's 400*l.*, making in the whole 2040*l.*, which, at eleven rix-dollars to the pound sterling, the then rate of exchange, gives 22440 rix-dollars, *all expended in a period of eight months;* to which, before the expiration of the twelve, must be added the sale of green forage and profits on the sales of cattle and other stock, in which I dealt considerably, amounting to 2300 rix-dollars more; thus giving an aggregate expenditure within the period stated of little less than 25,000 rix-dollars.

Here, again, the same anxiety in the commissioners to turn every thing the wrong side upwards is strikingly exhibited; for the real truth of the case is precisely the converse of the assertions in this passage. The term *improvement* is a misapplication altogether; there was nothing to improve, it was all creation, and of such confessed utility and judgment, as to be the admiration of every traveller who passed along. If clearing and manuring the land, forming good fences, planting the choicest fruit trees, laying out, not an

" embellished," but a usefully productive garden, and combining taste with strength and utility in the construction of the buildings, was not calculated to increase the value of the farm, I am at a loss to know what was. The lodge was especially adapted to the climate, and the only justification of the word " fanciful," is in the solitary circumstance of its awning being supported by trellice instead of posts. The garden was of the most useful culinary kind, cultivated exclusively for vegetables and fruit; and presented nothing ornamental to the eye, but a few of the European flowers planted on small borders, with which the beds were circumvallated. But I find no fault with the commissioners in this respect; on the contrary, I feel myself under infinite obligation to them, for it is in the excess of their partiality I shall be best vindicated by the public from the slanders of a report, teeming in every passage with sophistry and falsehood.

Par. 34.---' Much stress is laid by Mr. Burnett upon the incompetence of the persons who were appointed by the landdrost of the district to appraise the improvements; one of them, we find, was a builder, and the other was the veld cornet of the district, and persons who, from their habits, might be considered competent to appraise the value of the ordinary buildings and agricultural improvements in the district.'

Par. 35.---' Upon a review of the evidence that was given, respecting the value of these improvements, before the court of circuit, and allowing for the novelty of some them, we do not conceive that the sum of one thousand three hundred and fifteen rix-dollars, fixed by the appraisers, was too low an estimate.'

By the term " builder," the reader will naturally imagine the appraiser alluded to, was either a mason

or a carpenter. Mr. Retief, however, was a farmer, who, I will venture to say, never had a trowel or hammer in his hand during his life. It is true that his slaves and Hottentots had built him a store, which he sold to the Government for barracks, and afterwards enlarged; and it is also true that he was tempted to purchase a bull and a ram at enormous prices, and give 5000 rix-dollars for one of the Governor's English horses, on an understanding that he should have the contract for the erection of all the public buildings in Graham's Town, but this does not constitute him a builder. Be this as it may, both him and the veld cornet, from the relation they stood in to Hart, were, of all men in the district, the most disqualified for the office of impartial assessors. The opinion of the commissioners is too ridiculous to require comment; the flood had rendered the whole place a scene of ruin and desolation long before their arrival on the frontier; and I will stake my existence on the assertion, that after the scrutiny commenced under Earl Bathurst's *special* instructions, since the notice of Parliament, his Majesty's commissioners *never examined a soul* who had seen my place, or probably ever heard of it.

Par. 36.---'We have had occasion to advert to the declaration that was made upon oath by Mr. Burnett, before the agent of the sequestrator, of his possessing no property, and of having assigned it to a mercantile house in Cape Town for their benefit. It appears to us, that much of his embarrassment is attributable to these acts. They, in the first place, furnished a just ground, in the absence of any explanation by which they could be palliated or justified towards other creditors, for a declaration of insolvency, and we do not find, that either in the first trial that took place during the circuit of the year 1822, or during those

that occurred in 1823, any evidence was offered by Mr. Burnett to negative or disprove that fact.'

After the assignment of the whole of my property to Messrs. Ebdon and Eaton, of course I held none but in trust for them under their power of attorney, to which effect I could have no scruple in making oath. The recapitulations would be frequent, and the tale endless, if I were fully to expose the futility of all the conclusions drawn by the Commissioners of Inquiry from premises of their actual formation. My conduct, with respect to this affair, required neither justification nor palliation, for it was *strictly legal;* it affected no human being, but a man bent upon my destruction, whose infamous machinations it circumvented, and a thousand felicitations upon it was the public result. The insinuation, that I neglected to produce evidence before either of the Commissioners of Circuit, in disproval of the insolvency, is absolutely unwarrantable; nor can I imagine how Mr. Bigge could mention so many assertions at direct variance with truth. I am here charged, on two specific occasions, with having omitted to do that which, in both instances, *I was authoritatively withheld from doing!* If this does not exhibit the grossest partiality and injustice, they are mere ideal terms in language, without identity of meaning. The very documents appended to the report refute this imputation! These plainly manifest that at the commission of 1822, I referred the court for proofs of my disclaimer to the source where they were alone accessible,—the protocol of the sequestrator,—and that the court itself deferred any inquiry into its merits. While the very burthen of my memorial to the Governor complaining of the commission of 1823 was, for its *refusing*

me the *means of disproving the insolvency,* by referring the action which involved this disproof for trial to Cape Town.

Par. 37.---' On the first occasion the trial was postponed to give him time to procure evidence respecting it; but, on the second, he never offered any that tended to show that the property that he had been allowed to hold was sufficient to discharge the debts that were brought against him, or that his creditors were willing to accept terms, or enter into arrangements for future payment. He loudly complained of the infraction by Mr. Hart of the terms of the lease, in demanding payment of the rent before it was due; but upon this point he had nothing to oppose to the strong facts of having paid the rent for the first year, and having made a delusive tender of it for the second; nor to the equitable construction of the lease, in which the farm is described to " be let for the space of three years certain, at the rate of six hundred rix-dollars per annum"; nor yet to the certificate of the notary who drew up the deed, that the parties had fully agreed, and understood that the payment of the rent should be annual.'

Par. 38.---' If any doubt had remained upon our minds respecting that fact, it would have been removed by perusing the contents of a letter, addressed by Mr. Burnett to his commercial friend in Cape Town, dated 2d March 1821, in which he expresses his hope that remittances from England, or his sales of green forage, will enable him to discharge Mr. Hart's demand for nine hundred rix-dollars, " as well as his rent, *due the end of May.*" With this evidence before them, it cannot be matter of surprise that the commissioners of the court of circuit should have held that the notice of the ejectment was legally given; that the lease was cancelled for the nonpayment of rent, and that Mr. Hart was entitled to be put into immediate possession.'

It must be admitted that his Majesty's commissioners certainly assume a wide latitude of terms in their laborious endeavours to inculpate me; and that their

insinuations to my prejudice, however false or ridiculous, are generally couched in language as offensive as can be well imagined. It must be also conceded that they manage this with admirable tact. They do not call me liar and scoundrel in direct terms, but avoid the imputation of "virulence and intemperance," by insinuating, afar off, my title to these appellations. Debt, subterfuge, and fraud, float through the Report, pertinaciously clinging to nearly every paragraph, that one would almost imagine Mr. Commissioner Bigge was mistaking the subject of his scrutiny, and alive only to Newcastle or *Scottish* reminiscences.

The whole of this passage I have already explained by citing the very facts here adduced by the commissioners, and I repeat, that the idea of triennial payments of the rent was never entertained by me till suggested by the secretary Le Sueur. Surely there was no impropriety in adopting any *legal* course to defeat rascality! If Mr. le Sueur's information proved correct, the court would so decree, and there the matter rested; if not, the project failed, and Mr. Hart sustained no injury by the attempt. The very notice of so mere a trifle only serves to unmask the object of the Report, and to convince the public that that object is solely the infliction of obloquy on me. I must now be permitted to ask, what right have the commissioners to give me the *lie direct*, which they have done in calling my tender of the rent "delusive"? My veracity is surely entitled to as much credit as Mr. le Sueur's; and as no consequence of the least importance attaches to the fact, whether the rent was tendered or not, I think a little more; for Mr. le Sueur, a colonist and a Dutchman, is not, from

situation or principle, in a condition to oppose those views, best furthered by maintaining the negative. Be this as it may, I protest the rent was tendered, and I think the term applied by the commissioners a *gross and unwarrantable insult.*

The whole reasoning of the commissioners, with regard to the cancelment of the lease, rests on a foundation of sand. The law proceedings growing out of the published insolvency, which was illegal *per se,* had altogether exonerated me from its obligations: nothing can be more preposterous than the deduction laid down; by that, Mr. Hart is permitted to cripple me with impunity, and then punish me for not walking; or, in other words, he is allowed by a course of illegal and vexatious litigation to render the farm entirely unproductive, and then cancel the lease for nonpayment of the rent. In this light, the Circuit of 1822 regarded it, when Mr. Hart was distinctly told, in answer to his application for the title-deeds, that while I held the lease, containing, as it did, a clause of purchase, the deeds were my property, and that the lease could not be vitiated by withholding the rents until a decision upon the primary question of insolvency established the legality or the illegality of his, Hart's, proceedings.

Par. 39.---' Mr. Burnett has also complained of the conduct of the sequestrator, both in publishing his insolvency, and in suspending the proceedings after it had been declared; and he has imputed the last of these acts to some sinister influence of a person whom he does not name. From the best view we have been able to take of the order of suspension that was issued by the sequestrator, we are led to believe that it arose out of his mistake of the intentions of Messrs. Ebden and Eaton with regard to Mr. Burnett, and his imperfect knowledge of the language in which they were

conveyed, and, further, from not having given clear instructions to his agents at Graham's Town. It is attributable, also, to certain defects in the constitution of the sequestrator's office, and the mode in which the business was conducted.'

Par. 40.—' It remains for us to consider the vehement accusations that Mr. Burnett has brought forward against the commissioners of the court of circuit in the year 1823. We have already had occasion to notice the arrangement that was made by these gentlemen respecting the priority in which the several causes should be taken, and the reduction that was proposed in the number of them, and acquiesced in by the parties. They gave precedence to the action that had been postponed at the circuit of the former year, both on account of its importance to the parties themselves, as well as of that which it derived from having been made the subject of special reference to them by the court of justice, before whom it had been brought in the month of May preceding.'

Par. 41.—' Mr. Burnett alleges that it was the duty of the commissioners to have decided at once upon the question of his insolvency. This point was certainly at issue in the year 1822, when the action of ejectment was brought by Mr. Hart, and when time was given to Mr. Burnett to disprove it; but, during the interval that had elapsed, between the circuit of 1822 and 1823, more than two years rent had become due; Mr. Hart was allowed to add this claim to his former grounds of action; the court was of opinion, that the payment of rent was annual and not triennial, and the action and sentence of ejectment was maintained upon this ground, although no declaration to that effect appears in the sentence. We should, indeed, have ventured to assert the grounds of this decision, if we had not been able to collect them from a subsequent explanation afforded us by one of the commissioners, who has declared, that it was the opinion of the court of circuit, that the question of insolvency could not be fairly tried unless the sequestrator was made a party. By a colonial law, of rather recent date, this officer combines the executive duties that in England are performed by the sheriff,

with those of conservator and judge of bankrupt and insolvent estates. An indefinite kind of appeal is allowed against his decisions to the court of justice, where they do not appear to receive that prompt consideration which the nature of such references require. In this case, however, instead of addressing himself to the court of justice against the declaration of insolvency of which he so much complained, Mr. Burnett transmitted a memorial to the Governor, by whom it was referred to the landdrost and agent of the sequestrator in the Albany district, as well as to the sequestrator himself for explanation. The court of justice, therefore, was never in possession of the question of insolvency until the action above mentioned had been referred to their cognizance by the commission of circuit.'

Par. 42.—'It is necessary to observe, that as no professional assistance is to be obtained in the several districts of the colony, the proceedings of the court of circuit are not conducted with the regularity that is desirable, and that parties frequently suffer from their ignorance of the forms, which, however, are in themselves exceedingly simple and intelligible. On the present occasion the parties conducted their own causes, and Mr. Burnett delivered a written defence, in the course of which he indulged in a strain of virulent abuse of Mr. Hart, which the court found it difficult to check. The interrogation of the witnesses appears to have been irregular; and although every opportunity seems to have been given by the commissioners of circuit for the investigation of the grounds of action and of defence, a studious silence and reserve of their opinion is, however, observable upon the question of insolvency, which was undoubtedly mixed up with the others, notwithstanding the references that they had subsequently made of it to the full court. Appeals were entered by Mr. Burnett to the court of the Governor, against all the decisions; at the same time that the agent of the sequestrator was instructed by the president of the court of justice, and after communication with the court of appeals, to proceed to the execution of the sentence of ejectment, and the sale of Mr. Bishop Burnett's property, in satisfaction of the

other sentences that had been obtained against him, and which had been long delayed.'

The public will not fail to perceive the manifest difficulty the commissioners find in glossing over the conduct of the sequestrator, and the last commission of circuit; the slight notice they take of the important and conclusive acts of the preceding commission, and the reluctant tone of that animadversion, their calling wrings from them, upon such a mass of incongruity and folly. The whole of the above portion of the Report is nevertheless a virtual admission of the illegal treatment I have experienced at the Cape of Good Hope; and I am sure no unprejudiced person can read the foregoing paragraphs without coming to that conclusion. The following memorial and letter, sent to Lord Charles Somerset early in the year 1822, will show the exact situation I stood in at that period. It is not probable I should have made such representations without cause, or have transmitted to the Governor such a grievous detail of persecution, altogether fanciful and unreal; while every facility offered for examining into its merits, and the certain consequence of deception was disgrace and punishment.

*To his Excellency, General Lord Charles Henry Somerset, Governor of the Cape of Good Hope, Commander of the Forces, &c. &c. &c.*

The Memorial of BISHOP BURNETT, respectfully showeth,

That memorialist thinks it a duty incumbent upon him, both from public as well as private motives, to lay before your Excellency a statement of grievances which if longer unredressed involve no less an issue than the entire sacrifice of the capital he has expended, and the utter ruin of his prospects in the colony.

Memorialist came to the Cape of Good Hope equally eligible

with the other settlers to the support granted them by Government, and with personal assurances from the under Secretary for the Colonial Department, that he should receive all the patronage and assistance it could grant him; in faith, and solely in faith of which assurances, he embarked in so arduous an undertaking.

That it was distinctly announced to memorialist by the Colonial Secretary as well as by the Acting Governor, that he would be entitled to a grant of land commensurate with the strength employed, in the proportion of one hundred acres for every male adult in his service. For the first six months he paid and maintained sixty-six persons; for the ensuing twelve months never less than thirty, and at no period of his undertaking less than twenty; an extent of labour employed unparalleled throughout the whole emigration; while, contrary to these assurances, every application he has submitted to the Colonial Government for an extension of his grant beyond the unprofitable one thousand acres allotted him, has met with peremptory and unqualified refusal. He has thus incurred very heavy supernumerary expenses to secure an eligibility held forth by the Colonial Government, which it has nevertheless disregarded altogether.

Memorialist cannot conceal from your Excellency the additional mortification he experiences in observing the profuse and partial distribution of grants of land to persons equally untitled and unqualified to bring them into cultivation; he begs leave to cite two cases: those of Captain Trappes of the 72d regiment, and a shopkeeper in Graham's Town named Reteif. The former, after realising a considerable property from the sale of buildings erected by the troops, has had various erven and tracts of land assigned him; and the latter, after liberal remuneration for any losses sustained in former contracts with the Government, received a grant of eighteen thousand acres from Sir Rufane Donkin alone.

That memorialist, naturally looking for the fulfilment of these promises made him by Mr. Goulburn, applied with the other settlers for his proportion of the rations then distributing; these were absolutely denied him, although issued to persons standing precisely in his situation, on points excluding him from this participation in the view of the Colonial Government; but on all others with infinitely less solid pretensions than his own. He

applied for an erf in Graham's Town, with certainly a higher title to that indulgence than any individual in the province, and was refused. He applied for a few unoccupied acres immediately adjoining his farm, of no value to any person but himself, and was refused. While agricultural implements were decaying in the stores, and refused to his earnest entreaties, he was under the necessity of constructing his own at great expense, to bring land into cultivation for the supply of green forage for the commissariat; from undue preference to the military growers of this article, forty acres of it were left to ripen upon his hands, and ultimately destroyed by the cattle and horses attached to the Cape Regiment. In the hope that this and his various other losses would awaken some little commisseration in the Government, he renewed his application for the rations, and was refused; he applied for payment of grass taken from his land by the Colonial Cavalry, on the express promise of its commander that he should be indemnified, and was refused; he applied for seed-corn, then issuing to the settlers, after every individual throughout the emigration had received his proportion, at a period of anticipated famine, and while a large tract of his ploughed land in excellent tillage was lying unproductive for want of it, and was refused; founded on the notorious fact of the military (officers as well as men) trading with the Caffres, he applied for permission so to do, and was refused. In a case where forty head of his cattle were impounded for a trespass, assessed at two rix-dollars, he applied in vain for the liberation of a few cows for the evening's supply of milk to his establishment, nor could he redeem nine of them without lodging a deposit of four hundred rix-dollars and the remaining thirty-one as security. At a subsequent period, sixty Government oxen passed a night upon his barley forage, and totally destroyed the crops; the damage, in spite of the strongest remonstrances on the part of memorialist, was assessed by a soldier (actually belonging to the regiment chiefly owning the cattle) at less than one-fourth of the loss incurred; and the cattle no sooner lodged in the pound, than liberated, contrary to the most positive colonial enactments; nor was the amount, so unjustly adjudicated, paid, until five months incessant application and trouble had elapsed. Memorialist would think it affronting to trouble your Excellency with any comment upon the contrast these two cases exhibit.

At a time when the utmost alarm prevailed from an expected incursion of the Caffres, he applied for a few muskets, then lending to the settlers; communicating, at the time, that a party of these savages had been seen, during the preceding night, lurking about his cattle kraal, and was refused: he applied for the recent issue of rice, under the sanction of the district secretary's letter, that he was equally entitled to it with the other settlers, and was refused, although the labourers in his employ have applied for it---received it---and sold it for profit, whilst memorialist is buying rice for their support at very exorbitant prices.

That memorialist cannot by any exertion keep his property free from the trespasses and depredations of the military; new roads are formed upon his land by their waggons in quest of grass and firing, his thatch (a valuable article on the frontier) is cut with impunity, palisades by thousands have been taken from the woods; complaint is quite unavailing; when detected, they justify themselves in the orders of their officers or the Government, authorities it would be madness to contend with in the province of Albany. In one instance of flagitious outrage, where a party of the Colonial Cavalry rode leisurely under memorialist's windows in a state of complete nudity, shouting and gesticulating to attract attention, he was tempted to complain to Major Jones, commander on the frontier, but without redress.

That a canteen has been established by the late landdrost upon memorialist's land, entirely without his concurrence or knowledge, to the utter discomfiture of his agricultural pursuits; his people constantly frequent it; a system of idleness and ebriety has followed; day after day is lost, to the injury of his undertaking; nor can memorialist entertain a hope of abating this nuisance by the interposition of the magistracy, when, after convicting its proprietor of selling spirits to a contracted Hottentot, he was absolutely encouraged in his offence by the commutation of his punishment to one-tenth of the fine imposed by law.

On the presumption that this emigration was promoted by the Mother Government from patriotic and benevolent motives, combined with a desire to foster the rising colony, and enhance its prosperity, memorialist has paramount claims upon it, from the extent of capital he has sunk, and the disadvantages he has

exclusively laboured under; he respectfully submits to your Excellency, what cannot be controverted, that no individual or party has exceeded him in expenditure, enterprise, or good example: such claims he cannot forbear suggesting to your Excellency have, heretofore, in other colonies been recognised by a proportionate support and patronage; he has received no such support, and no such patronage, but, on the contrary, every persecution and annoyance that could be calculated to quell the ardour of enterprise and defeat its expectations. He dwells upon this subject with poignant and bitter feeling, when, in addition to the pretensions stated, he reflects upon others that should entitle him to a consideration hitherto withheld---to a voice in the affairs of a district, where he possessed, or should possess, property, and which his capital has contributed to improve,---to that distinction his walk in life has hitherto commanded, and to a little respect where he now encounters only official arrogance, insolence, and persecution.

If it should ultimately prove (what there need be little scruple in predicting) that memorialist was intended by the Home Government to have equal participation with the other settlers in its bounty and patronage, what remuneration, he presumes to ask your Excellency, will be due to him for the losses he has sustained, and the capital extracted from him by these advantages having been so pertinaciously withheld? Where now he is crushed by legal persecution, and incapable of any further struggle in his undertaking, he would, with the support every other settler has received, have capital now at his disposal, and remain free from debt and embarrassment.

Memorialist cannot conclude without calling your Excellency's attention to the peculiar hardship of his becoming a solitary exemption from the support extended to the settlers, contrary to positive assurances made him by the Government at home, and confirmed by the appointment of passage and rations from thence to this colony. Had it been intimated to memorialist by the under secretary for the colonies, that every assurance made him would be violated on his arrival at the Cape; that every chance of prosperous termination to his enterprise rested entirely on the caprice of the colonial secretary; that no distinction of classes amongst the emigrants would be recognised by the Cape Government or its functionaries, but that the capitalist of respectability, and his labourers, would be held in

equal estimation; that to vindicate the outraged feelings of the gentleman, and resent injury and insult, would be to challenge persecution; that any thing advantageous in the province would be exclusively secured to the military, already enriched by covert speculation; that to offend the vilest miscreant in office would be to insure prescription; in short, that so far from that benign and solicitous attention that five thousand subjects of Great Britain, expatriating to this colony, had reason to anticipate—they were to be greeted with taunts from the colonial secretary, and encounter throughout their struggle the most grievous oppression; had memorialist have received this assurance, he unquestionably would have avoided the colony.

Memorialist, confiding in the return of justice with your Excelleny's resumption of your government, and in the powerful plea set forth by the facts adduced, most respectfully prays,

That in consideration of his exertions, exclusively unaided by the colonial Government, and the consequent tax this want of support has proved upon his capital; the heavy losses incurred by two failing crops in succession; and the total sacrifice of his property in the event of a forced sale at the present juncture;—your Excellency will be pleased to order a suspension of any sentence against him until his returns enable him to discharge it, his Excellency prescribing such limits and securities as he may see fit; and that your Excellency will order him payment by the commissariat for the grass supplied the Colonial Cavalry.

And that in consideration of the superior claims advanced by memorialist, as well as of the injustice and intolerable vexations he has experienced, your Excellency will be pleased to grant him an erf in Graham's Town, and a tract of land not exceeding one hundred acres, the nearest to the town boundary.

And memorialist will ever pray, &c.

B. BURNETT.

Graham's Town, March, 26, 1823.

This memorial failing to have any effect, I next addressed the following letter to his Excellency:

MY LORD, Graham's Town, July 27, 1822.

Finding all the ordinary avenues to justice in this colony closed against me, and in utter despair of obtaining redress for

an unparalleled accumulation of wrongs sustained throughout the whole period of my abode here, I am compelled to appeal direct to your Excellency, and respectfully to solicit the interposition of your authority to relax the vindictive and arbitrary proceedings against me.

In explanation of the charges thus urged, I take the liberty of referring your Excellency to my memorial of the 26th of March last, as exhibiting a series of partial and oppressive inflictions on the part of the colonial Government up to that date; and I now beg leave, in continuation, to state, that—

The publication, in the Cape Gazette, of my insolvency, in direct violation of truth, has been followed by the sequestration of my property, and measures so arbitrary and illegal, as to alarm every settler in this province for the future security of his possessions. My grant of land has been made saleable one year before the customary period, merely to become tangible to the sequestrator, the colonial Government having thought proper to distinguish me from every other settler by refusing me the support extended to them, and then making my property amenable for the very embarrassments this resumption has created. This, my Lord, at any period would have been a most invidious proceeding, but, after two successive failures of the harvest, and repeated losses sustained by the aggressions of the military and the local Government, to say nothing of the difficulties which invariably attend the earlier enterprises of a colonist, it becomes one of great severity and hardship. After various delays, throughout a course of proceeding utterly incomprehensible to an Englishman, an order is sent to the landdrost to sell my property at public auction, and restore a farm on which I have expended my capital, to Robert Hart. Against this latter decree of the sequestrator I lost no time in protesting, on grounds I must trespass upon your Excellency's time to repeat.

The farm was rented on a six years' lease, with a power of purchasing it outright for a stipulated sum at any period of that term, and so worded that, according to the opinion of a notary, it was optional with me to pay the rent annually, or not until the expiration of my tenure. The first year's rent was paid, and that now due was never demanded of me but by a messenger of the court in the public street; but I lost no time in tendering it to the district secretary, who refused to receive it.

These are facts I can establish on unquestionable testimony, to disqualify any plea Hart may urge for ejectment, on the ground of not receiving his rent, admitting he was legally entitled to demand it.

I beg to impress upon your Excellency, that it has been in firm dependence on the inviolability of the notarial acts between us, that I have steadily contemplated the ultimate possession of this farm, which a positive act of sale and purchase, and the consequent deposit of the title-deeds in my hands, should sufficiently confirm; that I have sunk my capital upon it, and brought it to that state of cultivation which excites the observation and surprise of every person in the district. Various contingent circumstances have also contributed to enhance its value, of which no stronger proof can be given than my having underlet it at more than double the reserved rent, although that rent is treble what Hart had ever been offered before, making altogether, by the expenditure of my capital and industry, an improvement in the value of this property of six hundred per cent., in the short space of two years! How contrary, then, to every principle of justice, that both my creditors and myself are to be deprived of our right, and the sanctity of a recorded bond be outraged, merely to restore to a favoured individual a property to which he has no manner of pretension.

If, my Lord, from the mere circumstance of the Colonial Gazette having libelled my credit, I am held incompetent to the tenure in question, in justice to my creditors and myself, as well as in conformity to colonial practice heretofore, it should be sold at public vendue, to secure, by competition, the increased value it has attained, and not be surreptitiously smuggled into the possession of Hart, in a way that I feel persuaded will excite the strongest indignation of your Excellency.

Within thirty-six hours of the appointed time of sale, a notice of its suspension was exhibited in Graham's Town, and on inquiry into the causes of this delay, I was informed by the secretary that Messrs. Ebden and Eaton had undertaken to arrange the claims against me with the sequestrator. Satisfied on this assurance that there was at length a termination to that dreadful state of suspense I had so long endured, I could scarcely credit the messenger, who, on the same day, read to me an order to meet Robert Hart and his assessors on the following one, for the purpose of appraising the value of my improve-

ments upon the farm, preparatory to its restoration to Hart, two Dutchmen being named for this purpose, *both under Hart's control*, receiving benefits at his hands, and one of them personally hostile to me, from complaints I felt it my duty to urge to your Excellency respecting him, in my memorial of the 26th of March. If this, my Lord, is justice, I am perfectly at a loss to understand what may be oppression!

On the appointed day, the district clerk, accompanied by Hart and the assessors arrived, and in less than one half hour this appraisement was completed, which I can produce one hundred persons to swear could not have been done, with justice, under a day. Notice has subsequently been given me to quit the premises in twenty-four hours; to leave a habitation built by myself, in reliance on the good faith of formal engagements, and on the equity and protection of the laws!

Your Excellency will permit me to observe, that if necessity compels the sequestration of any property I hold in this farm, justice prescribes that it should be realised to the best advantage. This can only be effected by its sale, or the appropriation of the increased rent. That increased rent would, alone, at the end of the fourth year, amount to no less a sum than 3200 rix-dollars, still leaving me the right of paying for my purchase, the sole inducement to the expenditure I have gone to; but to restore it to Hart on such remuneration as two Dutchmen, notoriously under his influence, may please to award, is so manifest, so barefaced a robbery, that I feel persuaded your Excellency would despise the submission and the timidity that concealed it from your knowledge. That Hart is desirous to repossess the farm is notorious; that he has proclaimed his ability so to do many months back is equally well known; and that the sequestrator has in his instructions, *by some extraordinary coincidence*, squared exactly with Hart's wishes, is now also apparent; but if a transaction so disgraceful had even by accident originated in higher authority, I am satisfied it is but to expose it to your Excellency to see it frustrated with the reprehension it merits.

In making this last appeal to your Excellency, I confine myself strictly to the facts of the case, departing in no instance from that propriety of language which Colonel Bird has pleased to insinuate I am capable of disregarding. The infamous transaction related, I have characterized in terms befitting it,

not from the slightest want of respect to your Excellency, but from that insuppressible indignation I feel at finding laws enacted for protection of the subject so audaciously perverted to his ruin. It is true, my Lord, I could recount a *hundred* cases of distinct hardship, but as I have uniformly abstained from mixing in any party or political feelings, throughout the period of my abode in this colony, with the exception of one poor tribute of approbation to the magisterial conduct of Captain Somerset, and as the long succession of injuries and oppressions I have endured are motive enough for any measures I may pursue to obtain redress, I trust I may not be confounded with those who merit the rebuke of your Excellency's proclamation of the 24th of May.

I implore the interposition of your Excellency to rescue me from the effects of such monstrous oppression, and to support me in my determination not to resign the farm without that just equivalent the rights of my creditors and my own demand. If, on the contrary, I am still to continue an alien from the protection of the Colonial Government, and at no time to fall within its notice, but for purposes of persecution, then, my Lord, under the solemn conviction that it would be utter folly to attempt any further settlement in this colony, I beg leave to restore to the Government the land it has granted to me, and respectfully to request of your Excellency a free passage to England for myself, family, and seventeen witnesses, in such vessel as your Excellency may be pleased to appoint.---I have the honour to be, my Lord, your Lordship's very obedient servant,

B. BURNETT.

To his Excellency, the Governor, &c. &c.

This letter brought the following answer, which is scarcely more relevant than a chapter in Revelations.

SIR, Colonial Office, September 19, 1822.

I am directed by his Excellency the Governor to inform you, that upon his receipt of your memorial of the 29th of July last, he immediately made the necessary inquiries in order to ascertain whether, under the circumstances set forth by you, his interference in the case was requisite or legal, and his Excellency has found that the landdrost of the Albany district acted officially in the case complained of, under the immediate direction

of the sequestrator, in whose hands definitive sentences against you, passed by the worshipful the court of justices, in cases in which certain of your creditors were plaintiffs, had been lodged for execution. In such cases it is imperative on the executive officers to adhere strictly to the letter of the instructions given them. It has appeared, also, that, in consequence of your protest, the landdrost acting as aforesaid, did not proceed to your ejectment from the lands claimed by Mr. Hart as his property, and that, consequently, this point remains open to legal solution.

I am further to acquaint you, that if the sequestrator, or any other officer of this Government, exceeds the power intrusted to him, he is amenable to the courts of justice, where the injured party cannot fail to obtain redress; in the case which you have now brought before the Governor, such a course is the only one by which you can be relieved, should you continue to think yourself aggrieved; and as the court of circuit is on its way to Graham's Town, you will neither meet with delay nor inconvenience in adopting this mode of proceeding. It should be quite clear to you, that his Excellency cannot interfere in the decisions of the courts of law, unless those decisions (having been legally appealed from) are brought before him in the court of appeals. I am, Sir, your obedient servant,

C. BIRD.

B. Burnett, Esq.

From the reference to the commission of circuit, then on its way to the frontier, I could not forbear coming to the conclusion that it had received orders to investigate and pronounce upon my grievances with justice and impartiality; and I lost no time in taking measures to bring them before its cognizance. The conduct of that commission was so conclusive of the error committed by the sequestrator, and consequently of the illegality of all the acts emanating from it, that I am only astonished the Commissioners of Inquiry could have the temerity to pass over these facts, however strong their desire to shield Lord Charles Somerset's government from disgrace

and obloquy. The foregoing documents will show the position I stood in at the time. I had been *illegally* declared insolvent; I had all along protested this with vehemence, if the commissioners so will it; I had brought the question to issue before the competent and appointed tribunal, and that tribunal had pronounced me right: and is this fact and its authoritative establishment to be obliterated from my Cape history, and the unwarrantable persecution I have sustained to be legalized, because two highly salaried individuals decide it expedient to be so? These gentlemen form no supreme judicatory to which I have appealed, and it would, indeed, be a monstrous libel on the name of justice, if the fact of my sufferings at the Cape, and my hopes of redress, are to be solely contingent upon the view of two pensioned emissaries of Earl Bathurst, dispatched to inquire into the crying delinquencies of a man that minister has upheld for years against the voice of public opinion, and all the petitions and remonstrances with which the shelves of his office groan. I trust the sufferings of this aggrieved, Beaufort-ridden colony will at length be heard, not with the callous indifference so destructive of even hope at the Cape, as to occasion the enlightened and well-informed there to impress upon every departing suitor for redress, the utter folly of seeking it in Downing Street! but with sympathy and sincere disposition to ameliorate its lot. For the issue, as it may affect me, I feel no manner of anxiety, and, however at variance it may prove with justice, I am prepared to encounter it with fortitude and resignation. Nor shall any temptation induce me to blench, till I have thoroughly exposed the misdoings of Lord Charles Somerset at the Cape of Good Hope,

although, like Sampson, in his last retributive effort, I bring down inevitable destruction on myself.

It appears to me a most preposterous expectation, that the scrutiny of Parliament into the denounced offences of a public funtionary, is to be in any degree influenced, much less suspended, by the mere report of two individuals, selected by the very minister who appointed him, and whose inflexible determination to support him against the cries of a province, and the indignation of a whole country, necessarily casts a suspicion upon the integrity of their delegation. Mr. Bigge, however respectable, is but poor peccable humanity in common with the suitors, who seek redress and protection from the horrible tyranny of Lord Charles Somerset. Surely it is too much to say, because two commissioners decide to exculpate his Lordship, that the recorded grievances of hundreds are purely imaginary, and the fruits of a combination to hunt a just and worthy Governor from the seat of his domination.

With the explanations already given, a very few words will dispatch this part of the Report. If the publication of my insolvency was legal, the sequestrator had *no discretion* left; it was his bounden duty to bring the property to sale for the benefit of all parties within the period prescribed by law. If illegal, he should as promptly have atoned for his indiscretion by a public revocation of the advertisement. There was nothing optional, no middle course open to him; nevertheless, he neglected doing either. Admitting the commissioners' "best view" of the case, that, in his ignorance, he mistook the nature of Mr. Eaton's interference; am I to suffer from his incapacity or mistakes?—but this is all a juggle, and Mr. Eaton's

kindness towards me has been made a cat's-paw to disguise the true nature of this unparalleled proceeding. The sequestrator knew that, from the illegality of the published insolvency, he dared not at his peril proceed to the sale; he therefore availed himself of Mr. Eaton's interposition to suspend it,—but upon what plea?—why, upon one that the first following post from Graham's Town proved to him was fallacious. What then becomes of this excuse, which, if it ever had existence, only lasted, at the very utmost, one poor solitary month? And why, on its discovery, were the proceedings not resumed, instead of being left in abeyance for a *year and a half? Because, with this palliative in reserve, which, it was foreseen, the event would require, the Colonial Government without directly committing the sequestrator, could make him the medium of placing me in the cruel dilemma of either perishing of want, or committing, on every succeeding day of this long interval, some act which the Colonial law could distort into* FRAUD, *and thus place my* CHARACTER, *my future prospects, or, for aught I know,* MY LIFE, PROSTRATE AT ITS MERCY !!!

The whole of these paragraphs are sheer sophistry;—shadows against which it is in vain for reason to combat. They state no one fact of identity or being, but are the higgledy-piggledy lucubrations of a cunning brain, hard set, in its extenuation of measures at variance with every principle of justice and of right, and conscious that its task is not the development, but the suppression of truth. The conduct of the commissioners of 1823 is indefensible throughout. They were not merely culpable in the abstract for becoming auxiliaries to this vile conspiracy, but for the

supernumerary folly and absurdity with which they perfected it. Not to tire the reader with repetitions, let them fancy a man charged before Sir Richard Birnie with murder on the testimony of a single witness, while fifty respectable persons are present ready to swear he was at the time a hundred miles from the scene of its perpetration, would Sir Richard send such a man to a jury with this convincing *alibi* before him? Assuredly not; but the Commissioners of Circuit decided, in eight actions, against me, with a ninth unheard, *upon the merits of which, the very basis, character, and issues of the whole eight depended!*

Par. 43.—'It was found that the personal property had been much diminished, and certain articles of merchandise that had been sent by Mr. Burnett to Cape Town for sale, were arrested by the sequestrator in the hands of the consignee, and the proceeds were added to the estate for the benefit of the creditors.'

Par. 44.—'From the account that has been rendered by the sequestrator, it appears that the assets, after the deduction of the costs and duties payable to Government, amount to 4431½ rix-dollars; and that after the payments of the preferent debts, there will be a deficiency of 7061 rix-dollars.'

It might have been expected from men of reputed sense, like the Commissioners of Inquiry, that their zeal to crush me would have been at least tempered with caution, and that their Report would have contained no palpable and self-evident deviations from truth. Admitting I had to extenuate any diminution of property, or transit of merchandise to the Cape, which, I maintain, I have not; neither of these charges have any foundation. The few personals inventoried, remained the same to the last; excepting only that portion destroyed by the flood, or consumed as food

by the family; facts within the proof of hundreds on the frontier, and the "certain articles of merchandise," so imposingly insinuated as a dishonest transfer, were never sent by me to Cape Town. In exchange for my bark, I took a hundred half hides, and these I bartered for articles of consumption for my family and people; these articles were received before the hides left the premises, at which period my property in them ceased. They were subsequently sent by the purchaser to Cape Town; and on the intention of making my conduct fraudulent developing itself, he gave them up to the sequestrator as contributory to this purpose. On a difference arising afterwards as to the quality of these hides, I entered an action against the tanner, which stands recorded to this hour in the Secretary's protocol. Should I have thus blazoned this transaction, and established proof against myself with the most distant consciousness of its being illegal?

The statement of debts and assets may well stand as it does in the Report. I only wonder there are *two* items, and that an additional 14,000 rix-dollars were not added to the debit, *the amount I have been informed of the law charges against me.* The commissioners say not one word as to the necessity in which these few debts originated; they throw doubts upon the extent of my expenditure, and the enterprise which, under compacts of better faith, and a more restricted tyranny, would have justified them ten times over. They conceal the fact that the greater portion were incurred from very necessity in the face of this shattered credit—no mean proof of my estimation in the district—but they strive at only one object, to represent me as in debt, and fraudulent; they varnish over

all the flagitious persecution which had brought embarrassment upon me, they sanction the foul conspiracy to impeach my probity, for acts not merely just and honourable in themselves, but made inevitable and compulsory by the Government; but if a single transaction can be found capable of tainting my reputation by distortion however laboured, or misrepresentations however tortuous, they launch it forth in the most imposing colours as a fact so established, that the very tone of their relation seems to deprecate the slightest suspicion of partiality. The commissioners, however, shall find that I can perceive the whole plot, and that, in strict proportion to its speciousness, will be the public disgust at its infamy.

Par. 45.—'We have already had the honour to state, that the decision upon the action brought by Mr. Burnett against the sequestrator and Mr. Hart, for conspiring unlawfully to eject him from the farm, was referred by the commissioners of circuit in year 1823, to the consideration of the full court. The tenor of a very recent communication from the president and members, does not enable us to state in direct terms the nature of their decision, but from the evidence that has been submitted to them, and that is to be found in the proceedings, we have no reason to doubt that the charge of conspiracy either will be, or has been dismissed. The investigation that was ordered to be made into the charge against Mr. Burnett, of fraud against his creditors, was returned to the court of justice some time ago, but the consideration of it has been ordered to be postponed until the liquidation of the estate by the sequestrator has been effected.'

Par. 46.—'We think this system of perpetual reference and delay is much to be regretted, although the decision of the question of fraud will not materially affect the scheme of distribution of the proceeds of the estate, that has been submitted by the sequestrator to the creditors, and is now waiting the result of another tedious reference to the court of justice.'

This passage records an act of palpable injustice in the commissioners. Knowing the construction of the court of justice (or of injustice, as it is proverbially called) at Cape Town, they are well aware that this very expression of their opinion, "that the charge of conspiracy *will be* dismissed," at once insures the fact; and will be received by the Court as that higher dictation from which it has never yet dared to demur. This then, to those acquainted with the character of that body, can be regarded in no other light than an actual *prejudication of the case*, for there is no manner of risk in the assertion, that the court of justice would as soon pronounce its own dissolution, as pass a decree at variance with a published opinion, and consequently a forestalled judgment, of the Commissioners of Inquiry! The public will allow this fact its full operation in appreciating the character of the Report. I have now before me a detailed history of the cause in appeal, Durr against Van Reenen, which embraces the fate of the celebrated horse Kutusoff. I have an elaborate memoir of Mr. Buissinne's case, with an authenticated copy of his fatal letter to Lord Charles Somerset. I have ALL the papers connected with the fate of the unfortunate Edwards, and the illicit traffic in prize-slaves, and, above all, I am in possession of a complete development of every particular attending the robbery of the public treasury at the last capture of the Cape. These, it is my intention to lay before the public, that the character of this *august* body may stand in no equivocal light, and the condition of the Cape colonist be a little better understood than it appears to be by his fellow-subjects at home.

After the full exposition I have given of the mate-

rials with which this charge of fraud is fabricated the public will discern the invidious tenacity with which the Commissioners of Inquiry so repeatedly advert to it. It lingers on throughout the Report, erecting itself occasionally to the very last, and I really give Mr. Bigge full credit for the ingenuity he has displayed in rendering it so conspicuous. I wish I could pay his motives the same compliment. But, as I have before observed, how comes it subject to "this system of perpetual reference and delay"?—which, by the way, is one not usually deplored by the King's Commissioners of Inquiry. Why, when its merits were ascertained by the Board of Landdrost and Hemraaden, was it not instantly pronounced upon? There is but one answer. Because it *could not be.* My acquittal was *impossible.* That would have brought down disgrace and infamy upon the parties who concocted it, and have deprived the Government of, what it esteemed, an immense restraining power over my proceedings in this country; while, on the other hand, it was so flagrantly unfounded, so notorious a fabrication, and its design so obvious, that the very court which so grossly pandered to Lord Charles Somerset's vengeance against Buissinne and Edwards staggered here; and, whether restrained by conscience or apprehension, *did not dare* pollute its records further by so iniquitous a judgment.

Par. 47.—'With reference to the pecuniary resources that Mr. Burnett might have possessed, or to his ultimate hope of being able to extricate himself from embarrassment, we think it is clear that his sole dependence, either for the means of reimbursing the advances that had been made, or for payment of the debts that he had incurred, was the annual produce of his farm. To the failure of the harvest in 1820, he imputes his incapacity to discharge the debt of

Mr. Hart, and his disappointment in the amount of the produce that he had estimated at seven thousand rix-dollars. He speculated at the same time on the purchase of Mr. Hart's farm, when he had no means of effecting it, and was making preparations for establishing a distillery of spirits from the fruit of trees that he had planted, without any reasonable assurance of becoming the future owner of the land upon which they grew.'

The commissioners seem to exercise very extraordinary powers, but whether their right to speculate in my private affairs, and circulate falsehoods to my prejudice, is derived from their own free will, or writ of privy seal, does not appear; it is a most inquisitorial one, at any rate, and one I by no means recognize; and I give them this public notice, that if the cessation of their labours at the Cape enables them to return to this country before the end of my term of banishment, which is very improbable, I shall certainly question their title in person. Their opinion of my resources happens to vary materially from the fact. Although I saw nothing improper, or even very sanguine in calculating on a return for the capital I had sunk, those resources were extraneous to the farm, and, but for the oppression of the colonial Government, which indicated the folly of continuing to apply them farther, they would have remained available and adequate.

Entirely from memory, and without reference but to a single document, I will take upon myself to say that I never attributed "to the failure of the harvest of 1820, my incapacity to discharge the debt of Mr. Hart," and that I never made the slightest preparation for, or contemplated the "establishment of, a distillery of spirits from the fruit of trees." The fact complained of in the first instance, was the loss of my crops of green forage, through partiality to the mili-

tary growers of that article, the deceptive promises of Captain Somerset, and their ultimate destruction by the Cape Cavalry,—facts notorious throughout the district,—and, in my first letter to Mr. Wilmot Horton, I distinctly disclaim any serious participation in the effects of the blighted wheats. How adroitly the commissioners divert the blame from Captain Somerset's cupidity and bad faith, to God's providence! As to the peach-distillation, I never thought or heard of it, but from the Report itself; and I vainly puzzled myself for some time to discover on what this assertion could be founded: adverting, however, to it lately in a conversation with Mr. Eaton, that gentleman acquainted me that I did once, in a letter, ask his opinion as to the probability of such an undertaking succeeding; and I have since found his answer to the inquiry; but I protest most sincerely, that from that hour, the idea has never recurred. The passage in Mr. Eaton's letter, dated 16th March 1821, is as follows:

"In respect to distillation, of which you ask my opinion, I do not possess sufficient information to be able to form a just one. I was written to by a friend at home on that subject, who wished to know what prospect there might be for a gentleman who was coming out here to establish himself in a distillery, and the information I was enabled to collect on that occasion, by inquiries in Cape Town, was unfavourable to the speculation. The principal objection was the high price of fuel, and the expense of labour. Whether, on the spot you have placed yourself, those objections may not diminish, I cannot tell, and, probably, the difference in the price of spirits at Cape and Graham's Town may make considerably in your favour. Good Coniac brandy, for mixing with our wines, can be imported to this place for about three dollars per gallon, or four at most. Should you attempt it, I can only say, I wish you all the success you can desire."

Now this is absolutely insufferable, that his Majesty's commissioners should continually charge me with intentions that never existed, and then draw conclusions from them to my prejudice. Here it is gravely said that I was "making *preparations* for establishing a distillery of spirits," from the simple circumstance of having asked a friend's opinion as to the probability of such a thing succeeding; and then upon this, their own assumption, I am represented as a fool for calculating on returns from land I had no reasonable assurance of ever owning! Can a more decided proof be offered of the real object of this Report, when it becomes apparent that the most unimportant trifles are magnified, the most self-evident truths distorted, and conclusions hazarded upon assertions that have no manner of foundation. But admitting that I had seriously intended to establish a distillery, the actual tenure of the farm offered no obstruction; for Mr. Hart had been formally apprised of my intention to become its purchaser, and a *bona fide* transfer of the property had passed. Hart knew that this was my intention from the very commencement of my occupancy, and had stated to me his conclusion to that effect, from the circumstance of my going to so much expense upon it; while, so far from not having the power to perfect the purchase, I could have paid him the first instalment at the time with the utmost convenience, which I omitted to do, solely from my dependence on his word, as he had begged of me to suit the payment entirely to my own convenience, preferring rather at the time to see my funds appropriated to the cultivation of the farm.

Par. 48.—'Respecting the question of insolvency, which Mr. Burnett has always made a prominent one, (and there

can be but little doubt that the publication of it, as well as the notoriety of the action brought against him by Mr. Hart, had a fatal influence upon his credit in the district,) we are unable to discover the grounds upon which it could be impeached or set aside. The speculative value of his own grant, or the contingent interest that he claimed in Mr. Hart's farm, could not be taken into calculation by the sequestrator, as affording a satisfactory means of adjusting the pressing claims of creditors.'

This assertion is not only at variance with the fact, but in direct contradiction to Mr. Bigge's *own opinion and advice.* When I made a statement of my grievances to the Commissioners of Inquiry, I particularly pointed out the grounds on which I considered the publication of insolvency to be illegal,—and nothing can be more simple to the dullest comprehension. The Report gives this transaction a false colouring throughout; it constantly speaks of *debts* as the ground of the publication; while, in fact, it was the consequence of Hart's claim only. This amounted to 905 rix-dollars, while my claim upon the commissariat was 1280 rix-dollars, which claim *I had tendered to two landdrosts* (Major Jones and Mr. Rivers) for its liquidation; consequently, with this amount due to me by the Government, it was illegal to declare me insolvent for a smaller sum. Whatever the commissioners may have thought proper to publish in their endeavours to defend Lord Charles's administration, they were quite satisfied that it had cruelly persecuted me; and they expressed their utmost astonishment at the whole character of the judicial proceedings; but, on this point, they spoke with remarkable emphasis; and Mr. Bigge, whose perspicacity soon saw into the real nature of the case, exclaimed, with much animation, "Stick to

your grass claim, Mr. Burnett. If you only establish that, you upset the whole proceedings;" and yet these very men are now "*unable to discover the grounds upon which it could be impeached or set aside,*" precisely the same cause still existing, and the proofs of the claim so incontrovertible, that I will defy all the power of Lord Charles Somerset, with Earl Bathurst and the commissioners to back him, to defeat its ultimate payment! Nay, more, I have no hesitation in predicting, that when this matter is set before his Royal Highness the Duke of York, other consequences than the merely just one of payment will be the inevitable result.

The remainder of this passage is downright gibberish; I cannot, therefore, reply to what I do not comprehend.

> Par. 49.---'If the farm had been given up by Burnett when possession was demanded, in the year 1822, his creditors would have had the benefit of the improvements that had been made upon it, but he persisted in holding it until the end of the year 1823, when their value had been entirely destroyed and much of what had been constructed in wood had been removed by himself.'

The whole of this paragraph is so tortuous a piece of false reasoning, and so laboured a distortion of fact, that I wonder the commissioners could have the temerity to hazard it. "If the farm had been given up by Burnett," &c., as these very important personages are pleased to call me, is one of those speculative applications of the "peace-making" proposition, about as rational in its present use as to say, "*If* the victims to Lord Charles Somerset's tyranny and misgovernment had not denounced his delinquency to Parliament and the country, he would not

have been recalled. As the brother of a duke, influencing a great many votes in Parliament, he should not have been recalled, *ergo*, they were wrong." Nothing can be more clear than that Mr. Hart's object would have been answered by the surrender of the farm in 1822, and still more so, when he had just the same pretension to it in 1821; but because my surrendering it would have served that or any other purpose, does it follow that it was incumbent on me to do so? Ten thousand a year would be saved to the country by the Commissioners of Inquiry bringing their long protracted labours to a conclusion, and which, it is more than whispered, might have been done some eighteen months back, but I should think it highly presuming in me to state such an opinion. *If* I retained the farm legally, which I protest I did, what right have the commissioners to look into the consequences of an act entirely subject to my discretion? And, if illegally, why did the Government permit me, and why don't the commissioners lay the reproach at the right door? That the Government had not the power to compel me is manifest from its submission to my refusal, and I must, indeed, have betrayed the most deplorable fatuity to have accelerated that voluntarily, which the whole tenor of my conduct showed I was defying persecution and injustice to accomplish! I particularly claim the public attention to this inconsistency in the commissioners; they admit, that the action involving this point of legality is still pending, and yet found their whole hypothesis on reasoning that cannot possibly apply if it should be decided in my favour.

I have elsewhere repelled the charge of having removed what I had constructed. The wood-work

of a building entirely destroyed by floods, and the lodge-doors, were all I took away; and such is the discipline of his Lordship's favourite Hottentot *stepping* regiment, that, but for this precaution, in one night the whole would have otherwise disappeared.

Par. 50.---'From the impression that we have received from the evidence and statements laid before us, we had been led to consider that the injury and loss of which he complains, were imputable to his too sanguine reliance upon sources of credit that proved to be precarious, to the bad calculations he had made of the produce of agricultural labour in the district in which he settled, and to a want of economy in conducting it.'

As I had no "sources of credit" in calculation, so none could prove precarious. The expenditure I had already made, before the decided manifestation of hostility on the part of the Government, was sufficient to justify more sanguine expectations of return than I ever permitted myself to entertain, and any further outlay, when this persecution had once commenced, would have been folly indeed. The "supposed produce of agricultural labour in the district" was no overweening estimate of mine, but of Captain Somerset's; which, according to the profits of his erf in Graham's Town, as stated by himself, gave a return upon the land I had sown of more than *seventeen thousand dollars!* instead of half that sum, at which I had modestly computed mine. And the charge of profusion is altogether unfounded; for, on the contrary, as far as human prudence could exert itself, I maintained the utmost parsimony throughout my expenditure.

Beyond the fact of this paragraph, detailing deliberate falsehoods, I consider it to be a most licentious

outrage on propriety. The commissioners, I am aware, are deputed by writ of privy seal to inquire into and *report* upon facts, but not to colour them with their own opinions. In cases affecting individual right and reputation, their function, I presume, extends no farther than a transmission of just premises to the King's minister, from which it is for him to draw his conclusions; but these gentlemen assume the anomalous privilege of supporting in their conjunct person the conflicting characters of judge, jury, and advocate, each, and all, of which are diametrically opposed to their ostensible appointment of mere inquisitors. This zeal sufficiently betrays its object even in their Report upon my case, but in those directly in collision with his Excellency, as in the examination of Messrs. D'Escury, Heatlie, and others, during the jockey scrutinies, it is unblushingly manifested. By every law of reciprocity, I have just as much right to speculate on the private conduct and motives of my calumniators. Suppose, for example, in imitation of my Lord Bathurst's plan of constructive accusation, in his despatches relating to Mr. D'Escury —and I beg to apprise him that I possess *every* document connected with the *dark* transactions they embrace—suppose I thought proper, in my endeavours to prove the partiality of the commissioners, to take up the report of Mr. Bigge's intended marriage with the amiable and most accomplished Miss Somerset, am I not entitled, with just as much propriety, to ratiocinate a little on the causes of its abandonment. Whether the learned commissioner considered his prospective harvest likely to be more abundant from gratitude to services apparently gratuitous, than under

a conjunction exacting those services as mere acts of tributary duty to the family compact; or, what is equally probable, whether the lady herself perceived too little incentive to her obedience in an alliance with what she doubtless esteemed low plebeian origin presented in the uninviting garb of a suitor past his grand climacteric, ailing, aching, and distempered,—surely, I repeat, I have as much right to adopt this recriminatory course as the commissioners have to provoke it.

Par. 51.—'The judicial proceedings of which he complains have certainly furnished us with grounds for proposing future improvements in the several branches of the judicial administration, and although we find that they are marked with same defects of uncertainty and delay that we had occasion to observe in other cases that have been brought before us, yet we are not prepared to say, that under a more perfect administration of the laws, the result to Mr. Burnett would have been different; while, on the other hand, we are firmly convinced that the proceedings furnish no grounds whatever for the charges that he has made of injustice, partiality or corruption.'

The commissioners say, that my complaints have furnished grounds for future improvements in the several branches of the judicial administration, which is a virtual admission that those with which I have come in contact were inadequately formed; but yet that, under a more perfect administration of the laws, the result to me would have been the same. Beyond the implication here, which is pretty apparent, this assertion cannot be supported by the inference they are so desirous to indicate; for granting, under the allowed imperfection of the court, that its decisions furnish me with no grounds of complaint, does it fol-

low that they would have been the same had the court been more or less corrupted? I complained of nothing but what I experienced; complaint infers aggression, and the heaviest in my case was its cruel protraction and delay; these suggest improvement, which implies a court against which no ground of such complaint exists; how then could the decisions upon causes instantly pronounced, or left in twenty months' abeyance, be equal in their results to me? If so, it must be a matter of indifference to a suitor in Chancery whether he obtains a judgment in one week or one hundred years. This reasoning is on the assumption that the abstract causes at issue were justly adjudicated; but, so far from this being the case, I maintain, and I can prove, that they were *partially*, *unjustly*, and *corruptly* adjudicated, contrary to evidence and fact, to every principle of equity, and only rationally to be accounted for in the timidity, incompetence, or servility of the judicial body. It may be urged, that mere incompetency is no corrupt dereliction. Admit this; but then, how unspeakably corrupt must be the motive for appointing such judges, or continuing their appointment an hour after a knowledge of their incompetence? I shall not debate here upon the character of the judicial body at the Cape, as the subject will be more appropriately introduced in a complete exposé of Lord Charles Somerset's administration at the Cape, which it is my intention to lay forthwith before the public.

Par. 52.—'Mr. Burnett has endeavoured to connect with these proceedings the refusal of Lieutenant-Colonel Somerset to allow him a certificate of the receipt of a certain quantity of grass that he alleged to have been cut from his estate, for the use of the Cape Cavalry; we do not find

that this circumstance has any direct connection with the judicial proceedings; for, although we observe that Mr. Burnett has alleged to your Lordship that he mentioned his claim upon the commissariat department for payment of this grass to the landdrost and agent of the sequestrator, as a means of discharging his debt to Mr. Hart, and that he protested against the landdrost's refusal to receive it, yet we find that this assertion is positively contradicted by the landdrost; and we think it extraordinary, that when Mr. Burnett was required to declare upon oath, what property he possessed that was applicable to the payment of the debts that were judicially demanded, he should not at the same time have made an exception of this claim upon the commissariat department, which, if admitted, and certified to be just, would have enabled him to relieve himself in some degree from his embarrassments.'

Par. 53.—' Mr. Burnett has contended that the foraging parties of the Cape Cavalry cut from his estate, at different times, quantities of grass, amounting in value to the sum of 1280 rix-dollars; and that although he has frequently applied to the proper authorities, he has never been able to obtain an authentic receipt or certificate, by which alone he could obtain payment from the commissariat department. In the year 1821, he brought an action for the purpose of compelling the officer then in command of the cavalry, to deliver to him a certificate for two hundred and fifty-six loads of grass. Upon previous application the officer had declared, that although he found that grass had been taken from Mr. Burnett's land, contrary to his strict injunction, yet, after the strictest inquiry, he could only find that forty-four loads had been taken, and for these, Mr. Burnett received the sum of 220 rix-dollars in payment. It appears that this grass had been taken at a period in which the landmarks of his grant had not been fixed, and the foraging parties had not observed the boundaries that divided it from a tract of Government land, to which they were accustomed to resort for grass. The court, not deeming the officer responsible for any quantity that had been taken subsequent to the period of his command, relieved him from the claim, but reserved

to the plaintiff Burnett, the right of instituting his action against such other persons as in law were liable. Mr. Burnett then made application to Lieutenant-Colonel Somerset for a certificate of the quantity of grass that had been taken during his command. It is admitted by Lieutenant-Colonel Somerset that he gave a promise to Mr. Burnett that he should obtain a receipt for such a quantity of grass as appeared by the regimental books to have been received. On Lieutenant-Colonel Somerset's departure, this inquiry was left to the care of the officer that succeeded him, and who, when called upon, excused himself from responsibility for any quantity of grass that was cut after he had ceased to be in command. Mr. Burnett was thus left to his remedy against Lieutenant-Colonel Somerset, to whom he more than once made application, both personally and through another person, who overtook him on his road from Graham's Town to Uitenhage. We observe that Colonel Somerset has not alluded to this interview, nor has he pointedly contradicted the assertion that he promised to give the certificate. We think it most probable, that any promise that he did give was conditional; but, on the other hand, it is much to be regretted that a claim of this nature had not been immediately brought to decision, by some more formal and satisfactory mode of investigation than that which he had assigned to it. The complaint was preferred to the acting Governor, Sir Rufane Donkin, who declined to interfere in it, or order payment of any military account without a proper certificate; and it was preferred, at a later period, to his Excellency Lord Charles Somerset, who, in an interview that is correctly described by Mr. Burnett, promised to use his best exertions in his behalf. The result of this interview was a proposal to submit the investigation of the claim to a regimental board of officers, which Mr. Burnett declined, and the question remains still subject to dispute. The discussion of it has given occasion to Mr. Burnett to notice in strong terms the mode in which the green forage was supplied to the Cape Calvary, and the unjust and partial exclusion of himself and others from a share in the supply.

Par. 54.—'The quantity of green barley and oats grown by

persons who, from their contiguity to Graham's Town, could advantageously dispose of it, was very small, and in the year 1820, much below the regimental demand. Until a late period it had not been usual to give notices of the quantity required, but those persons who had any to offer tendered it to the officer of the comissariat department, who kept in his office a list of names of the suppliers and the days upon which the grass would be ready for cutting. The quarter-master of the regiment received his instructions from the officer of the commissariat department, to take his forage from the suppliers, according to the rotation in which they stood in the list; and if it happened that the oats or barley of any individual grower were not sufficiently, or too much matured, the crop of the person next in rotation was taken. With the exception of Mr. Burnett, no complaint was made to us during our stay at Graham's Town of undue preference shown by the commissariat department; and it appears, upon the explanation furnished by Lieutenant-Colonel Somerset, as well as by a letter of Mr. Burnett, addressed to his correspondents in Cape Town, that his disappointments in furnishing the expected supply, although caused by Lieutenant-Colonel Somerset, was not intentional on his part, and that it principally arose from the badness and scattered state of his crop, and the difficulty that was experienced in cutting and gathering it. For the quantity that he proved to have delivered, he received from the commissariat department the sum of 434. 7. 4. rix-dollars. To a person who had rated his annual profits upon the production of this article alone at ten thousand rix-dollars, and had expended a considerable degree of labour in cultivation, the competition of several individuals who were enabled to avail themselves of the momentary demands which the failure of their neighbours had created, was a serious impediment; we believe that nearly two-thirds of the quantity of green forage consumed by the Cape Cavalry were furnished by officers of the regiment, to whom it had been customary, in consideration of the very insufficient accomodation that the barracks afforded, to allot small pieces of ground in the immediate vicinity, for the purpose of enabling them to build cottages and houses according to their means,

and which they have been allowed on their retirement to transfer to other officers who succeeded them. This indulgence was extended to officers of other corps who were stationed at Graham's Town at different times, and had received local appointments.

Par. 55.—'It is to be remembered, that Graham's Town had originally been selected as a military station in the year 1814, for the force appointed to defend the frontier, and that the accommodation of the troops had therefore been a primary object; but it must be admitted to have considerably impaired the quantity of disposable land that migh have been appropriated gratuitously by the Government to the settlers, or to mechanics who were desirous of establishing themselves in the town, after it had been fixed upon as the seat of magistracy of the new district.

Par. 56.—'It is also to be observed, that as the officers had a priority of selection, they secured the best situations in the town, and the Government has been on more than one occasion reduced to the necessity of purchasing from them an accommodation for public purposes, which a greater degree of caution would have enabled it to command. We had occasion to observe also, that allotments near Graham's Town had been conceded to military officers who had held temporary commands in the district, as well as to others, without any condition or stipulation for their occupation or improvement. In case of their being unenclosed and cultivated, they form a great temptation to the trespasses of the town herds, occasioning a tax upon the inhabitants for the damage sustained by each trespass; and in some instances they are retained by the grantees in an unoccupied and unimproved state, until the increase of population shall have augmented their value.

As to my *endeavouring* to connect these proceedings with Captain Somerset's refusal to supply me with the certificate, the *endeavour* is in the commissioners to separate what cannot be disunited. It is on this very fact that all the illegality I so much complain of is founded, and nothing can be more simple than the connection they call in question. The

commissariat owed me 1280 rix-dollars for grass supplied the Cape corps; this claim I tendered to discharge a sentence for 905 rix-dollars, and upon this sentence *only* they founded their declaration of my insolvency. This it is which constitutes its illegality, and if I succeed in proving the claim to be a just one, which I have amply the power of doing, the attempt of the commissioners to separate it from the proceedings that have so much aggrieved me will speak for itself. I shall endeavour, as much as possible, to avoid reiteration, but as this point is perhaps the most important, and certainly the most influential in the catalogue, it is necessary to illustrate it to the reader.

The disclosure of truth is so simple an operation, that when once told, it is told for ever; no amplification can make it more convincing, nor can any falsification with which its opponents envelop it long obscure its lustre. In my narrative to Downing Street will be found a simple detail of the transaction in question, and if I were to add ten volumes to it, I could but repeat the same. After referring to this, it will be sufficient to reconcile those apparent discrepancies the commissioners point out, and I shall be quite satisfied to leave it to the judgment of the public. The first is Mr. Harry Rivers's assertion, that I never tendered this claim in liquidation of Hart's sentence. To defeat the effect of this *infamous falsehood*, it would be quite sufficient to prove that I had tendered it to his predecessor when the sentence was first propounded, but I shall go farther, and claim, at least, an equal, if not a superior title to credit in competition with Mr. Rivers. Is it probable that, with the means in my power of defeating this conspi-

racy, I should neglect to use them? Is it likely that, after tendering this claim to Major Jones as an effectual bar to the consummation of this iniquity, I should, by any chance, have forgotten so paramount a duty as proposing it again? I should think not, nor will the public think so either. The truth is, when Mr. Rivers declared the sentence, and demanded property to meet it, I repeated, what he already knew, that I had no property but what was assigned to Messrs. Ebdon and Eaton, but that I had a claim upon the commissariat more than covering the amount, which he was bound to accept. This he declined receiving, as it was not certified by Captain Somerset; an objection I had foreseen, and which induced me to come forward with a written protest. This I then handed to him; HE READ IT, and with some little demur, laid it upon the table. After quitting the office, I proceeded to the shop of the chandler Stone, and, when within a few yards of the door, was overtaken by a messenger from Mr. Rivers, who presented me with the protest as a paper I had accidentally left with the landdrost; I so instantly saw through the drift of this manœuvre, that I went laughing into Stone's shop, where I met Captain Campbell, and related to him the whole affair, and I am sure he is too honourable to withhold his confirmation of this fact if appealed to. In a diary I kept recording every occurrence as it happened, are these words, under date the 30th of January 1822: "Mr. Rivers repeated Mr. Hart's sentence to me, which had been propounded on the 31st of October last by Major Jones, when I *repeated* my tender of the grass."

What the commissioners consider so extraordinary

in the latter part of this paragraph I do not altogether comprehend. If they mean, how happened it that this claim formed no part of the property assigned to Messrs. Ebdon and Eaton? they are readily answered, it had then no existence; but if they insinuate that it was not tendered in liquidation of debts judicially demanded, they are decidedly in error. There must be now accessible to these gentlemen in the public offices, at least twenty memorials and letters to the Governor and colonial Secretary, all of them, more or less, complaining of the grievous hardships of the proceedings against me, while this claim continued unsettled. I have, at this moment, on the table before me, at least forty documents referring to it. I have dinned it in the ears of all the departments, before whom I could, by any ingenuity, make it cognizable from the first moment of its origin, and on every judicial application to me for the payment of money, I have invariably offered this claim. How far it was just will be seen presently, but if just, the relief would not have been in *a degree* as stated by the commissioners, but in a whole entire revisal of the proceedings.

If his Majesty's commissioners had absolutely taken pains to furnish me with materials for exposing the character of their mission, and the spirit in which this Report is written, they could not more effectually have contributed to my success than by the introduction of this very fifty-third paragraph. It is from beginning to end a tissue of misrepresentation and error. In the first place, I brought my action in 1821 for *three hundred* loads of grass, and the payment of forty-four, then adjudicated, left the balance two hundred and fifty-six to be recovered from Captain Somerset. The insinuation, that the grass had been

taken by mistake, from ignorance of the boundaries, is altogether fallacious; inasmuch as there was no Government land near my estate which produced grass long enough for cutting; and no cause exists for the plea, as the grass was taken with *my concurrence from the very centre of my land, at Captain Somerset's express desire, and on his promise of payment;* and my dependence on his honour, was the only cause why I did not secure daily certificates of the quantity taken. My application to Captain Somerset is here represented to have *followed* the adjudication of the commissioners of circuit, but it *preceded it,* and the action itself was *the consequence of Captain Somerset's breach of promise, and subsequent intolerable juggle.* No such thing as a conditional promise ever passed Captain Somerset's lips, nor was the slightest reference to regimental books ever made; the promise was given while the sale of his effects was going on, previous to his leaving the frontier, and in these words: "You see I am too busy to give you the certificate now, but I give you my word that I will leave it with Johnston to-morrow morning, as I must see him before I start on my journey." No deputation of the kind stated here ever took place, nor did Captain Stuart, the officer alluded to, know anything of the case in question, till, wearied out by Captain Somerset's subterfuges, I made one formal application to him, prior to the institution of legal proceedings at Bathurst. The application of the person alluded to, as overtaking Captain Somerset on his journey, *did not* occur after I "was thus left to my remedy against Captain Somerset," but on the day following the very first application for the certificate, and this fact and the promise which followed it, are well authenticated

to his Excellency in the notarial declarations of Mr. Francis, who overtook Captain Somerset on his journey, and myself. Lieutenant-Colonel Somerset makes no allusion to the interview, because it is a fatal proof against him, nor does he contradict the assertion that he promised to give the certificate, because he cannot do so with any regard to truth; *but would he have promised me a certificate for* 300 *loads of grass received for the use of his regiment, if I had* NOT *been entitled to it?* How can the commissioners possibly justify an opinion that Captain Somerset's promise was conditional, in the teeth of two notarial declarations to the contrary, while they admit that he did not pointedly contradict the assertion, that he had given the promise? It is actually projecting excuses for Colonel Somerset, which his own conscience will not permit him to suggest. Sir Rufane Donkin *did* interfere in it; he expressed his indignation at it, both to Captain Campbell and myself, and he only ceased exerting to get the claim liquidated, when he found Captain Somerset pertinaciously withheld the certificate. I did *not* decline submitting the investigation of it to a regimental board of officers, on the contrary, I eagerly closed with Major Fitzroy's proposal to this effect, and only retracted my consent, when I found that board was to be constituted of officers *selected* from the Cape Corps, the whole of whom carried me in hateful recollection. God forbid I should impute an extra motive in their vassalage to the son of their creator,—but I think his Majesty's Line will stare when told that, in the face of continued joke and remonstrance, they addressed their communications to their Commander, "*The Honourable* Captain Somerset," and this young

man was weak enough to be tickled with such fulsome adulation. The following extracts from the Cape Town Gazette will show what sort of fate would have attended my claim before a board of Cape Corps officers, while, at the same time, it will enable the public to form some judgment of the condition of settlers at the Cape of Good Hope :

We have been favoured with the perusal of a letter from the frontier, giving an account of the late riots in Graham's Town, from which the following is extracted :

" 7th February.

" The Commissioners arrived the night before last. The town was illuminated, and the people, at about ten o'clock, began firing. The troops in the barracks, not being aware that the Commissioners had arrived, and from the distance of the barracks from the town, not seeing the illumination, thought that the Caffres had made an irruption, and the troop (Cape Cavalry) marched to the town, under the command of Captain Taylor. When they arrived (as they thought) to assist the unprotected inhabitants, they were received with groans and hisses, and abusive appellations, such as " Piccadilly Butchers," " Caffre hunters," &c. &c. ; and as they moved on to suppress the firing, by order of the landdrost, these symptoms of disaffection became more pronounced, and bullets were fired at the soldiers : about Brigade-Major O'Reilly's house they were discharged in abundance.

" These soldiers patroled all that night and last night ; to-night it is expected all will be quiet.

" The boors and people from all round the country for miles, came galloping in, thinking the Caffres had come.

" The people who were here during the attack in 1819, said that the Caffres came on so suddenly, and the firing commenced so irregularly, that they were, on this occasion, persuaded that the same event had happened, but that night had been chosen on the present occasion ; the day attack having before failed.

" Major Somerset (the Commandant) was insulted in a most unprovoked and uncalled for manner, by Mr. Biggar, (*ci-*

*divant* paymaster of the 85th regiment, who was cashiered,*) and Mr. Phillips; two persons who had come out as heads of parties, and who had been treated with great kindness by the Government; this was done before *all the rest of the rabble.* He damned him, called him a liar, damned his father and the Government; and went on in the most violent manner possible.

"In justice to the Commandant, I must observe, that he bore these outrageous insults with great temper and moderation: in the first place, giving them no cause for this conduct; and in the second, making no retort, and using no violence whatever.

"I must add, that Mr. Geary, the clergyman to the troops and to the station, (in both instances Government appointments,) had his house illuminated one of the first; and was out in the streets, cheering the mob most loudly, and swinging his hat over his head in a manner very indecorous (to say no worse) in a clergyman!!"

Audi alterum partem.

An extract from a letter on the subject of the events which took place on the arrival of the Commissioners of Inquiry at Graham's Town, dated February 7th, which was stated to be written by an eye-witness, having been sent to the printing-office for insertion in the Gazette of the 21st of last month, the Editor does not hesitate to give publicity to the following letter, which he received, in contradiction to the statement contained in that extract:

"Sir, "Graham's Town, March 2, 1824.

"The account in the 'Cape Town Gazette,' of the 21st ult., of what is termed "the late riots in Graham's Town," being manifestly intended to degrade the settlers in the public opinion, by imputations of unruliness and disroyalty; as one of this persecuted body of people, thus grossly slandered, I think

* Paymaster Alexander Biggar, 85th regiment, found guilty, by sentence of a general court martial, held at Plymouth, May 5th, 1819, of having embezzled several sums of money, obtained from the War Office, amounting to 1300*l.* or thereabouts; and for most disgraceful and infamous conduct, in endeavouring to persuade Wm. Buckmaster, Serjeant and Paymaster's Clerk in the regiment, to desert, for the purpose of thereby lessening the body of evidence against him. On which charges Mr. Biggar was sentenced to be cashiered, and to make good the sum of 1300*l.*—*Vide James's Courts Martial, page* 825.

it my duty, in vindication of my own principles, to declare that the whole of the extract in question is a tissue of misrepresentation and falsehood.

"It is true that the inhabitants of Graham's Town, under the sudden influence of uncontrollable feelings of delight upon the arrival of the Commissioners of Inquiry, manifested their joy by firing and illuminations, (a very natural tribute of respect to functionaries of their consequence, and from whose labours they have so much reason to calculate on a new order of things in this colony.) The sentiment was universal, and the expression of it simultaneous. It is also true, that this feeling, by implication, might be construed not very complimentary to the colonial mode of discipline, and that in exact proportion to the zeal of this all hail! may possibly be deduced a corresponding reproach elsewhere; but that, beyond the cause I have stated, and the effect which followed, the settlers merit any shadow of imputation, much less the brutal and ferocious attack of the military which ensued, I most solemnly deny; and the writer of this intelligence, be whom he may, unless imposed upon himself, should be held up to public hatred and execration for his calumny.

"Fortunately for myself, I was not in Graham's Town during this "firing of bullets," or, from late experience, I have a presentiment that I should not now be in a condition to make this remonstrance; but I, who distinctly heard the firing, felt neither apprehension nor alarm; naturally concluding that it was a public emanation of joy on the arrival of the Commissioners.

"That this event should have been unknown to the troops at the time they left their quarters, is an assertion absolutely incredible! I, residing three miles from Graham's Town, beyond the barracks, was acquainted so early as six o'clock in the evening that the Commissioners were expected hourly, and that preparations were then making by the landdrost for their reception. Surely this intelligence, which circulated with such extraordinary celerity in every other direction, could not have been exclusively kept from the barracks so many hours, with the constant communication which is almost momentarily passing between the two places; but conceding this point to your informant, which involves the measures of that night in still greater absurdity; as, if it is an argument at all, it is one of apology for the intrusion of the military, what occasioned

them to persevere after discovering their error? A detection which must have followed their entrance into the town almost instantaneously.

"That balls might have been fired, a charge most resolutely denied, is not improbable: in the exuberance of their duty, the loaded muskets were very likely discharged, shotted as they found them, though with the instinctive precaution which governs every man upon such occasions, of pointing his piece with sufficient elevation. You are not, however, to conclude from this hypothesis, that bullets were fired; or that the truth of this accusation is in any way admitted. With respect to the time of firing, I most positively aver, that it commenced long before nine o'clock.

"If the inhabitants of the town (for they are too few in number to justify the term 'populace,' and they certainly have no distinguishing claim to the epithet 'rabble') suffered some hasty expletives to escape them, it stands upon unquestionable proof, that not a hiss or a murmur was heard until the assault of the troops commenced; and then, the only indication of opposition on their parts to an aggression so wanton and so unprovoked, was remonstrance and expostulation.

"Would the soldiery, allow me to ask, have been led on to this outrage, if, upon entering the town, it was found that the Governor had arrived!

"I was in Graham's Town great part of the following day, and I will venture to assert, without fear of successful contradiction, that not two persons can be found in the whole district, who came that day to Graham's Town in consequence of the overnight's firing, although considerable numbers arrived to attend the sitting of the court, and make inquiries about the Commissioners.

"Whatever disputes arose between Mr. Biggar, or Mr. Phillips, with the landdrost and commandant, they evidently resulted from the call upon the military; and as this colloquy appears to be the gravest charge advanced, how can this consequence of an act, by any mode of perversion, be distorted into the cause of it? And upon what point does the Government rest the necessity of its interference? The language imputed to Mr. Biggar is not only disclaimed by him, but is absolutely denied by every person in his company; and the terms, 'Piccadilly Butchers,' and 'Caffre Hunters,' are declared

to be equally inventions, or quotations from that vocabulary authority ever has at hand when it becomes expedient to brand the subject with radicalism and disaffection. But it will not be found a charge of questionable authenticity, although omitted by the writer of your report, that the most intemperate terms of reproach were used by the military to the settlers; and that an officer of the Cape Corps should be found sufficiently zealous in his delegation as to exclaim, while chasing a poor tailor into his house, "Cut the b——r down! Blow the b——y b——r's brains out!"

"Upon the whole, a more scandalous libel on an oppressed but meritorious body of people; nor one where the design of the slander is so palpably manifest, was ever promulgated. But fortunately, in this instance, policy has overshot its mark; and no doubt exists, that a general vindication awaits the settlers from sources unpolluted by the corruption which has made it so long necessary to stigmatise and traduce them.

"With an unfortunate epoch in the life of Mr. Biggar, this question is in no one shape involved, and every feeling mind must revolt at the vindictiveness which could thus give it unnecessary publicity. The laws of his country have visited with their own tempered severity whatever offence he may have committed; and no power has a right to inflict upon him one pang of additional punishment. The inhumanity of this proceeding, which chiefly aims its shaft at the peace of an innocent wife and family, so situated as acutely to feel its venom, might well have been spared; for while it snatches from oblivion an occurrence to which time was fast consigning it, for no one purpose but to afflict and lacerate; it shows the monstrous anomaly of a press accessible to unwarrantable attacks upon private character, but impenetrably closed against vindication or defence.

"It will be fruitless to expect the publication of this letter at your hands; that an antidote may therefore accompany this detestable poison against the moral vitality of the settlers, I shall lose no time in forwarding copies of it to the London press.—I have the honour to be, Sir, your very obedient servant,

"B. BURNETT."

Among the exhibits to the Report will be found a letter from me to Colonel Scott, afterwards resident of Simon's Town, and president of a court-martial,

in which I very foolishly interested myself,—a gentleman I shall have occasion to allude to hereafter. To do the commissioners justice, they have introduced this letter most adroitly; for, in the way it appears, it represents me as setting so little value upon my grass as to obtrude it, without solicitation, upon any one who would take the trouble of cutting it. It insinuates, too, a sort of sycophancy, as if I had been anxious to scrape favour with the 6th regiment as a set-off against the proverbial hatred of the Cape Corps; and it gives occasion for a very sapient remark of the brave, erudite, and accomplished Lieutenant-Colonel Somerset. But how stands the case when I supply the context? The public shall see; some of Colonel Scott's servants had been repeatedly detected cutting grass, but as I felt under personal obligation to that gentleman for having permitted me to take shingles from one of the Government woods, I contented myself with slightly rebuking them for their trespass, when came the following note:

Graham's Town, November 1, 1822.

Lieutenant-Colonel Scott's compliments to Mr. Burnett, would feel obliged to him to permit his servants to cut grass on his farm. He is sorry to find that they have been trespassing on his property, but Lieutenant-Colonel Scott was not then aware of the extent of Mr. Burnett's farm.

B. Burnett, Esq.

It was gratifying to see that the rancorous feeling of the Cape Corps and the Government underlings towards me had not extended to the 6th, though, bating this consideration, I could have done no less than give this reply:

To Lieutenant-Colonel Scott, &c. &c. &c.

Sir, Farm, Saturday, November 2, 1822.

You, or the officers of your regiment, are welcome to take grass from my premises whenever you please.

An article of so little value to myself I have not denied to the use of any one who has applied for it; " and you must allow I cannot exact a less tribute to *proprietorship* than a simple ' if you please.' "

The trespass you allude to was, I am persuaded, one of perfect ignorance; and from the nature of my rebuke, I am only surprised how it came to your knowledge.

If you were aware of the depredations I have endured, and of my consequent losses, you would not be surprised at a course which makes it necessary for me to grant formally, what otherwise you, or the officers of the 6th, might have taken unasked. ---I am, Sir, your very obedient servant,

(Signed) B. BURNETT.

Remark made by Lieutenant-Colonel Somerset.

" This is worthy of remark, as it is for this article Mr. Burnett is now so loud in his demand for payment."

The foregoing is a true copy of that deposited in the Colonial Office at Cape Town.

(Signed) J. GREGORY.

The object of introducing this letter without the foregoing note, will not escape the penetration of the reader. The act it develops is attributable to Colonel Scott; the application of it to the commissioners. That Colonel Scott meant to subject my unsophisticated letter to some sinister purpose, is manifest from his depositing it in the colonial office; and yet what pretext had he, in common honesty, so to record a kindly letter, emanating at once from the heart, in reply to a note beguiling it from me, of which note I will stake my existence he never kept a copy. If he disclaims the latent imputation I have cast upon him, and makes the disclosure of my letter a mere ulterior act, no matter whether, what he esteemed, a tribute to justice, or a prostitution to patronage, he is equally dishonourable; for he has violated the sanctity of that implied confidential intercourse, the sacred ob-

servance of which is considered the peculiar and striking characteristic of the gentleman; and as the words "the trespass you allude to" denotes a foregone conclusion, the purpose of the commissioners in publishing it was equally sinister. Colonel Somerset's observation is perfectly just; it is, indeed, worthy of remark, that his iniquity should have made the grass so worthless a possession, as to induce me to give it to all applicants, for, through his bad faith, I could neither get paid for what I had supplied, nor induce the commissariat to take more.

Colonel Scott knew that from the loss of all my cattle, and the rigid determination of the Cape Corps to send twenty miles for grass, sooner than purchase it of me, that it was a valueless possession in my hands, and I have no doubt that his application was concerted with Colonel Somerset to obtain some such admission from me.

The green forage system, so oppressive in its effects upon the settlers, is by no means strictly detailed in the Report. Nearly all the erven in or near the town were, from its foundation, either gifts, or very cheap sales, to the military, on which they erected houses and cultivated green forage. When the immense profit attending the growth of this article became known to the settlers, they naturally turned their attention to its production. As I have before observed, the purchases were made by the commissariat in the professed rotation of the offer; but this was a regulation so perpetually infracted, as to excite just apprehension among the settlers, and point out the folly of growing an article subject, in its consumption, to partiality or caprice. No such thing as competition by tender ever existed, although assumed to be

the practice by Earl Bathurst and *his Excellency the Governor!!* The list of proffers was a state secret, only accessible to the initiated. When the poor, reprobated settler's crop was verging to maturity, he made his offer; which might, or might not, for aught he knew, have been appended to the list, but it generally required half a dozen fruitless journeys to Graham's Town, and much demurring of the commissary before the fatigue-party could be brought to cut it, the military in the meantime pouring in their supply; and as only two days' consumption was taken at a time, the grower of large quantities generally found the bulk of his produce too ripe for use before the revolution of his turn. Had all the cultivators been settlers, there would have been nothing in this regulation to cavil at, provided it had been enforced with impartiality; but the favoured party was the military, who had no manner of pretension to even a fair competition, much less a preference. This is pretty manifest from the returns in the Report, where it will be seen that in a period of four years, ending December 1823, out of 162 receipts of forage, 100 were supplied by the military and civil servants of the Government!

As I had taken my farm expressly for the cultivation of forage, I may say invited thereto by the assurance of Captain Somerset, and as my expenditure had been very considerable, the weight of this grievance fell heavier upon me than upon my neighbours; and the subjoined correspondence will show that it was neither an imaginary evil, nor one I could permit to escape the notice of his Excellency, although, from the circumstance of his being the chief cultivator of green forage at Cape Town, and my

complaint inculpating the conduct of his son, little hope of remedy could exist. The copy of my first letter I cannot find; it, however, merely disclosed the system with its attendant consequences, and prayed for its abolition; indeed its contents may be pretty well inferred from the answer:

SIR, Government House, August 30, 1822.

I am directed by his Excellency the Governor to acknowledge the receipt of your letter of the 19th August, and to inform you in reply, that his Lordship is not aware of any regulations which restrict landholders from disposing of the produce of their land whether they may be military men or civilians.

In order that all persons may have an equal chance in offering supplies for Government consumption, those supplies are always obtained by *bonâ fide* tender.---I have the honour to be, Sir, your obedient servant,

W. B. WHITEFOORD, A.D.C.

B. Burnett, Esq.

To this I rejoined,

MY LORD, Graham's Town, September 16, 1822.

I have had the honour to receive your Excellency's acknowledgment of my letter dated 19th August, in which I complain of the military being permitted to monopolise the supply of green forage to the commissariat.

It is true, my Lord, that an officer in active service has the privilege of purchasing or acquiring lands, and an unquestionable right to dispose of their produce, but as this position has very little relation to the one in point, I fear your Excellency is not so well acquainted with its detail as could be wished.

I beg respectfully to submit that the lands in military occupation are neither purchased nor testamentarily acquired, but granted by the colonial Government in preference to what may certainly be esteemed the paramount claim of civilians; nay, there are instances of military applicants succeeding to the ejectment of settlers from spots of ground they had appropriated under the sanction of the local authorities.

The instances of military men embarking capital for the growth of produce in competition with a labouring and distressed class are, fortunately for their reputations, very rare; and I feel persuaded your Excellency would express much in-

dignation, if commanding at the Horse Guards, you were informed that a body of officers at Knightsbridge had obtained a grant of Hyde Park to supply Covent Garden with cabbages; such men, my Lord, would justly be held degraded, although their efforts might probably have no influence on the industry of their brethren in the trade.

But here, my Lord, such a vocation is doubly degrading, inasmuch as the class of beings they compete with are in the last state of poverty and wretchedness, and utterly incompetent to contend against the facilities they possess. A military man in Albany is never deficient in ploughs, oxen, or seed for his land, and at all times sure of consumption for his crop. I have repeatedly had land in high tillage lying waste for want of seed when money could not purchase it; and scores of acres left upon my hands, through preference to the military, though brought into cultivation at the very suggestion of Captain Somerset, our deputy landdrost, whose forage was then cutting out of rotation.

It is not on trifling grounds that I could be induced to trouble your Excellency with a remonstrance so urgent, but as we, and not the military, are the sufferers during our abode in this ill-fated colony, it would be but equitable to secure to our waning exertions the only little certain return to industry left.

I beg leave to disabuse your Excellency of a belief that green forage is supplied by tender, no such mode of sale has *ever* occurred since my arrival here, the preference has uniformly been given to the military, and that to a latitude I should dread to be the organ of disclosing.

With a frankness I trust your Excellency will approve, I take the liberty of adding, that I conceive this grievance to be so oppressive in its operation as to justify my communicating it forthwith to his Royal Highness the Commander-in-Chief.—I have the honour to remain, my Lord, your Excellency's most obedient and very humble servant,

B. BURNETT.

To his Excellency the Governor, &c.

Very little more will be required in despatching the green forage question. It was a system of intolerable oppression to the predial settler, and disgraceful to the officers embarked in it; and I repeat

that the crops I lost by it during the first season of my undertaking, were estimated to be worth upwards of 7000 dollars. I observe in another part of the Report, that Colonel Somerset denies the incursion of the cavalry horses, which furnishes a further deplorable instance of the partiality of the commissioners: had they only written to the frontier to make inquiry into the fact, they would have found abundant proof of it, as it was witnessed by at least twenty of my own servants, and became a subject of conversation throughout the neighbourhood. It remains only to say, that the assertion of officers, on their removal, having *transferred* their erven to their successors, is entirely false; they invariably sold them.

Par. 57.---' The situation of the land near Graham's Town that was granted to Lieutenant-Colonel Somerset, we observe, has been adverted to by Mr. Burnett. This land has been built on and enclosed; but we cannot omit to express the strong sense that we entertain of the inexpediency of conceding lands contiguous to the towns, and possessing the advantages that are peculiar to this grant, in the temporary accommodation that it affords in pasturage and water for the cattle of the boors who frequent the market, and which, under the name of " Uitspan," is ordered by several instructions to be held in perpetual reserve, as indispensable to the public convenience.'

It is a most extraordinary coincidence, that the only act which calls forth the unqualified reprobation of the commissioners throughout their Report, should be the act of Sir Rufane Donkin! for it was him who made this grant to Captain Somerset, though, I am persuaded, from representations that kept him in ignorance of its trenching upon the town liberties. This will be apparent from the fact of Sir Rufane having offered me the grant in question when he was

on the spot, an offer he was the last man to have made, with a knowledge that the land was reserved for public use. It is on this spot that Colonel Somerset grows an enormous quantity of forage to the detriment of the settler; and it is here that the infamous pounding system is so peculiarly exhibited, as to have given the estate the nick-name of the cattle-trap.

Par. 58.—'The establishment of the Somerset farm, and its immediate connection with the commissariat supplies that is noticed by Mr. Burnett, had been a source of perpetual dissatisfaction to the English settlers, from their location in the district of Albany in the year 1819, while the manner in which the purchases were made by the superintendent deprived them of the advantages of disposing of the very small surplus that the effect of the blight and depredation had left to them, under the system of open tender, by which the supplies to Government are usually purchased. The establishment of this farm, in 1814, originated in the disappointments that were experienced by the different detachments of the military force stationed on the frontier in receiving their supplies, and in the objectionable manner in which they were made.'

Par. 59.—'From the representations of an individual who had given some attention to the state of the frontier district, an expectation was entertained, that by the establishment of a farm in an advantageous position, under the control and support of the colonial Government, means might be devised of obviating disappointment to the troops, by the timely formation of a depôt for grain and animal food, to which also the farmers of the frontier district would be glad to contribute by the sale of their stock and produce; and it was hoped, that by the progressive cultivation of land and rearing of stock, the farm would enable the colonial Government to relieve the British Treasury of of all expense in the subsistence of the troops employed in the defence of the frontier.'

Par. 60.—'As the interests of certain individuals who had shared in the former defective system of supply were found to be opposed to the success of this establishment, it was

deemed necessary to give it the benefit of all the protection and support that the Government could afford. We accordingly find that an order was issued by the Commander of the forces, dated 3d October 1816, announcing, "That the Government had taken upon itself the supply of the troops on the frontier districts from its own farm, as far as its resources would allow, and declaring that his Excellency was determined to visit with the severest penalties any person who should presume to throw obstacles in the way of the Government agent in furnishing the supplies, or who should not be found ready to lend the most effectual aid to a measure of such importance to the troops and the colony."'

Par. 61.—'With a view to facilitate purchases from the farmers, and at the same time to provide for their demand for articles of consumption, that they with difficulty procured at that period by indirect means from Cape Town, the agent of the farm there was authorised to make purchases of goods, which were disposed of at the farm in barter for cattle and corn, or were paid away in the shape of wages to labourers.'

Par. 62.—'An advantageous position was chosen in the north-western boundary of the district, that was then called Uitenhage. and some expense was incurred in the erection of buildings, the collection of agricultural implements, and the clearing of land for tillage. The combination of these advantages enabled the colonial Government to aid the supply of the troops on the frontier, and to render it more independent of accident, but not to supersede the necessity of a commissariat establishment. While the Somerset farm had to contend with the disastrous visitations of blight, with which the agricultural establishments in the country were affected, the assistance of the commissariat department was resorted to for supplies of grain in times of scarcity, which were sold by them to the farm at cost price, and conveyed in the colonial vessels from Cape Town to Algoa Bay. The superintendent, therefore, acted as purveyor of a certain portion of the military supplies, at rates and prices that were fixed by the Commander of the forces, while the colonial Government was enabled to combine the profit of the contractor with greater regularity

of supply than had been experienced from the intervention of such persons, but without the security against failures that the usual conditions of a contract afford.'

Par. 63.---'The price of the rations delivered by the Somerset farm to the commissariat department was fixed in the year 1818, by the Commander of the forces, at thirteen stivers and four-fifths, (6d. sterling,) but was afterwards regulated by the average rate of the contracts for which the supplies that were not furnished by the farm had been taken, varying from sixteen and a half stivers to eighteen and one-fifth stivers per ration. From the month of June 1820, to the same period in 1821, the supply of five stations, that had been taken by contractors at an average of eighteen and one-fifth stivers per ration, was abandoned by them, after notice, in April 1821, and new contracts were entered into for the remainder of the year, (not exceeding two months,) at an average of twenty-three and one-sixth stivers per ration. This is the period selected by Mr. Burnett, in his petition to the House of Commons, in which he states that he should have been glad to have furnished the rations at ten stivers. We conceive that this assertion is sufficiently refuted by the fact we have just stated, of the abandonment of so many contracts, and the formation of the only one that was subsequently made at a much higher rate than that which Mr. Burnett has specified; a reference also to the very high prices of wheat, and the difficulty of procuring it at the same period, negative the probability of any contract being successfully executed for the supply of the frontier districts at ten stivers. From the month of June 1821, to the month of December 1822, the Somerset farm was paid for the rations it supplied at the rate of nineteen stivers; and for the next six months, ending July 1823, the price of the only contract that then existed being reduced to thirteen stivers, a corresponding reduction took place in the rate of charge made to the commissariat department by the farm, amounting to thirteen stivers; but as it appeared to the Commander of the forces to be unjust to regulate the price of supplies made on the detached and distant stations by the Somerset farm, by that of the supplies procured in a place (Algoa

Bay) that possessed peculiar facilities, and at which consequently the rate of contract was always lower than any where else, an order was issued by which the commissariat department was directed to be charged for rations supplied by the Government farm, from the period commencing 25th December 1822, and ending July 1823, at nineteen stivers, being the prices at which they were paid for in the preceding year. On the application of the officer who succeeded to the commissariat department in July 1823, the supply of the European troops was allowed to be opened to public tender and contract for the year 1824, and which was effected at the rate of thirteen stivers per ration at Graham's Town, and eighteen stivers at the advanced posts. Until September 1824, the Somerset farm continued to ration the Cape Corps; but during the present year, the native as well as the European troops upon the frontier have been supplied by open tender; and such has been the combined effect of the measure, and of the increased resources of the district, that the whole military force is now supplied with rations at *fourpence-farthing sterling*, being a fraction more than two-thirds of the deduction of sixpence that is made on that account from the daily pay of the soldier.'

Par. 64.---' From a reference to the accounts of the Somerset farm, it appears that very considerable balances have accrued in favour of the colonial Government, from the supplies that it made through this establishment to the commissariat department. These balances have amounted, in the period commencing 30th August 1816, and ending 31st December 1824, to the sum of 442,631 rix-dollars; and they may with propriety be attributed to the economical system upon which the purchases were conducted, the low rate of wages for which the labour on the farm was procured, and to the prices that were ordered to be paid for the supplies.'

Par. 65.---' We are not aware that the advantageous circumstances under which these supplies were made were directly brought to the knowledge of the Lords Commissioners of the Treasury until the month of July 1823, although the additional trouble and expense that the system occasioned, and the authority under which the prices were charged and

paid for the rations by the British Government, had been made the subject of incidental communication. The deliveries are stated to have been made in a satisfactory manner by the superintendent of the Somerset farm, upon a very extended line of frontier; but we have not been able to ascertain that any saving was occasioned to the British Government, or any greater degree of facility in the supply, than might have been fairly expected from an ordinary degree of attention paid by the officers of the commissariat department. On the other hand, as the resources of the frontier districts began to expand, and a competition for the supply of carriage had been established in the course of the third year after the arrival of the British emigrants on the eastern coast; and as the continuance of the Somerset farm was observed to operate unfavourably to their interests, it was with satisfaction that we learnt the decision of this Government to put an end to the establishment, to dispose of the stock and materials, and to convert the house of the superintendent into a residence for the landdrost, secretary, and district clerk of the new district of Somerset, that was formed out of a certain portion of those of "Graff Reynet" and "Albany." The arable lands were laid out in allotments, and have been sold advantageously at long credits.'

Par. 66.---'Upon examining the accounts of the Somerset farm, our attention was directed to the considerable amount of the sums that had been remitted by the superintendent to Cape Town. In the early periods of the establishment, viz. from 1814 to 1818, the accounts, after giving credit for the proceeds of everything that was sold, exhibit balances against the colonial Government; but from the month of July 1819 to the end of the year 1824, in the course of which the number of rations issued to the army as well as to the settlers had greatly increased, the annual balances were considerably in its favour. Remittances were made by the superintendent of the farm to the colonial secretary, and were either placed to the credit of the land revenue, or to that of the Somerset farm account that was kept at the Discount Bank. From the 25th January 1820 to the 27th February 1821, the period in which the Government was administered by Sir Rufane Donkin, the sum of one hundred

and eighty-five thousand rix-dollars was carried to the credit of the land revenue, and blended in the public accounts with other sources. We do not, however, find that the colonial auditor has ever noticed in his annual reports, either the augmentation that was thus made to the general revenue, or the causes of it; but he attributed the diminution of the land revenue that took place in the year 1820, to the effect of the general blight that produced a failure in the crops. The sum of one hundred and sixty-seven thousand and thirty-six rix-dollars was expended partly in the payment of articles for the use of the farm, and merchandise, in discharge of part of a debt due by the farm to the commissariat department on account of supplies, and in the purchase of a stallion. The sum of ninety-five thousand and eighty rix-dollars was expended in the construction of barracks at Graham's Town; of a custom-house and store for the reception of goods at the mouth of the river Kowie, and in payment of a quantity of wheat that was sent to the Albany district, in a period of scarcity for the use of the settlers; although we see no objection to the appropriation that has thus been made of the several sums that were placed at the disposal of the colonial Government, yet we cannot help observing, that the sources from which they arose do not seem to have been sufficiently explained to his Majesty's Government; and that for such portions as were placed to the credit of the Somerset farm account at the Discount Bank, the mode of drawing that was adopted by means of drafts of the town agent, countersigned by the colonial secretary, was utterly at variance with the instructions of the Lords of the Treasury, under which, all payments out of the colonial revenues are required to be regulated and made by the warrant of the Governor alone.'

The Somerset establishment is one involving so many considerations, and so much pains have been taken to obscure its proceedings, that it requires no ordinary tact to unravel them, and expose, not merely the object of its formation, but the injustice of maintaining it after the emigration of 1820, and the

infinite mischief it has produced. It is almost superfluous to remind the reader, that monopolies in general are as much the fruitful sources of individual peculation, as they are of aggression upon public right; and that more or less of suspicion attaches to the motives and conduct of those by whom these privileges are enjoyed: this observation applies, in an eminent degree, to the one in question.

Lord Charles Somerset's motives for creating this establishment I shall not attempt to scrutinize; but merely call the attention of the public to a few facts connected with it: a duty the commissioners have made incumbent upon me, by their flat contradiction to my assertion, that the troops might have been rationed at ten stivers per man, when the commissariat was charged eighteen and twenty-three; but when their full Report upon this extraordinary establishment is laid before the House of Commons, I shall submit to the public a more elaborate reply.

As far as I can penetrate the very involute exposé of the commissioners, I see nothing growing out of considerations for the *public* good that warranted this establishment in the outset. And this brings to view another very singular coincidence, that it should be born the very second year of his Excellency's appointment, and only expire on the arrival of his Majesty's Commissioners of Inquiry! Has one single benefit accrued from it to the colony?—quite the contrary; it has operated balefully, throughout the whole period of its existence, on the interests of the farming class, and enriched *some treasury or other* at the expense of the home one. When I denounced it to the commissioners, Major Colebrooke, I will say, *most zealously* persisted in representing the variance

in the price of rations as a fact quite immaterial, on the assumption that it was only the right hand of the colonial Government paying money into the left; while the truth is, the home treasury was paying the extravagant and arbitrary charges of a monopoly over which it had no control.

It appears, from 1816 to 1818, that the price per ration charged by the Somerset farm was sixpence sterling: the exchange during that period fluctuating from 112 to 133 per cent. premium, giving a mean, in round numbers, of 122, or something above 13 stivers per ration. The following year it grew to $16\frac{1}{2}$ stivers per ration, and retained the same price in 1820. In 1821 it rose to 18 1-5th; and for two months of that period to 23 1-6th; the next year it was as high as 19; and in 1823, when abated by natural causes to 13, it was raised again to 19 by the *peremptory mandate of the Governor;* and the very instant this monopoly is done away, the contractors, whom I well know to be clever shrewd men, not at all likely to pick up a bad job, are content to receive 13 stivers per ration; *and Mr. Hart, the Somerset superintendent, actually tenders himself at* $16\frac{1}{2}$*!* What were the circumstances which enabled Mr. Hart to tender at this reduced scale? Were the crops more abundant, and beef and mutton cheaper? quite the contrary; the crops were destroyed by the rust, the whole eastern district presented no prospect of supply, and butchers meat had risen considerably in price. The price of wheat, when Hart was contractor, varied from five to eight rix-dollars the muid; and during the period the contract has been by *public* tender, wheat has varied from 9 to 17 rix-dollars per muid. The present contractors have been known to

pay so high as 22 and 23 rix-dollars per muid in the market at Graham's Town. Give Messrs. Cock and Lee a farm, where they can raise from 8,000 to 12,000 muids of wheat—give them extensive grazing ground for their sheep and cattle—give them prize negroes and Hottentots to till their land and guard their herds, and I will stake my existence on the fact, that they shall supply the troops at *less* than *one-third* the sum which Mr. Hart received on account of the colonial Government. Now, what can be inferred from so plain a statement, not resting upon mere assertion, but upon official data and recorded evidence? What, but that this establishment, by preventing competition, and monopolizing the whole supply, has arbitrarily dictated its own prices for provisioning the troops, and has CORRUPTLY *enriched itself at the expense of the British Treasury*.

If the facts adduced were held insufficient to establish this conclusion, it would be only necessary, for removing every doubt, to glance at the relative position of the Somerset establishment, and the farmers, whose industry it has for so many years paralysed, especially with reference to the settlers of 1820. The lordly Somerset establishment had all the "means and appliances" for securing the monopoly, if it had even *been* by competition:—the finest land in the whole colony, subject to no taxation or impost, no quit rents, opgaafs, or indirect taxes, to cramp its enterprize; unlimited capital at its disposal, its operations carried on by slaves and Hottentots, fed at the lowest possible cost, and paid no wages; the boors, dreading to offend its known patron, and ravished with the punctuality of its payments, and scarcely a charge against its productions but the wages of the overseer,

two or three understrappers, and half a dozen necessary mechanics. How different the condition of the boor, and still worse of the English settler, who possessed not one of these advantages; the latter especially debarred from the service of slaves, and paying exorbitant wages to his labourers; and yet these very English, at a period of comparative dearth, can be content to sink the price of rations from 19 to 13 stivers, no doubt leaving for themselves a very ample profit! Such a statement requires no comment.

But there is one feature in the conduct of this farm, which, beyond all others, subjects it to the severest reprehension,—the scandalous advantage it took of the distressed and helpless condition of the settlers. Although the colonial Government infracted the guarantee in Earl Bathurst's circular, by keeping back from the settlers the second and third instalments of their deposits; it, nevertheless, till these sums were exhausted, furnished them with rations at only an advance upon the market price, sufficient to cover the ordinary expenses of agency and carriage, but the subsequent issue to their credit, for a period of twelve months, was charged, without any previous intimation, at the frontier price to the troops, nearly *double the former rate*, and every location is to this hour saddled with a mortgage to that amount. I know that to one party, when the commissariat account sent in amounts to Rds. 2162: 7: 5, the real charge on the former equitable scale extends but to 1145 rix-dollars,—thus fleecing the poor settler of nearly cent. per cent. on his purchase!! This applies to a party of only twenty souls; what then must be the overcharge on the rationing from 3000 to 4000 settlers? I should think, *at least, from twelve to fifteen*

*thousand sterling*—all taken from the British Treasury. It must be, however, remembered that the beneficent issue in the first instance was under the administration of Sir Rufane Donkin, and that the *increased* charge was the measure of Lord Charles Somerset, whose motive for thus enriching his "establishment" I leave the public to discover.

The inquiry which next presents itself is as to the extent and application of its profits. With regard to the first point, the commissioners have given no sort of information, but a statement resting entirely on the word of the superintendent, and that statement I pledge myself to the public to prove FALSE. The gross amount of remittances in cash and produce, made by Mr. Hart to the colonial Government during a period of four years, is stated to be 442,631 rix-dollars, which is to be received also as the whole amount of profit. Now, if Earl Bathurst will give me access to such evidence as I can call for, I have no hesitation in saying that I will prove the profits of that "establishment" during the period quoted to be *infinitely beyond that amount;* and in establishing my claim to credit for this assertion, it will be only necessary to impress upon the public, that the solitary fact in opposition to it is the bare *ipse dixit* of one man, and that man the confidential agent of Lord Charles Somerset over that "establishment" whose accounts are the subject of inquiry!

If it is supposed that the supplies made by Mr. Hart to the Commissariat, which came ostensibly from the Somerset farm, were all the produce of that "establishment," a gross error prevails. The chief part were purchases made by Hart from the boors in the various districts, and paid for by bills drawn

upon his agent; no manner of control existing over the conduct of these purchases, nor any check upon the accounts. Mr. Hart had thus the power, *if he pleased,* to exercise it, of charging the establishment *his own* price for every head of cattle bought, and then issuing from the great *entrepôt,* the same cattle to the commissariat at an increased charge, no public competition by tender operating to restrict and keep it under. I shall here relate a very appropriate anecdote: A person travelling in the district of Uitenhage, was entertained by a boor, and, in the course of conversation, observed, "How comes it, Mynheer, that Mr. * * * * * *, of Graham's Town, gives you so bad a character?" "Give me a bad character!" exclaimed the Dutchman; "he dares not." "O, but he does," rejoined the traveller, "and calls you one of the greatest rogues in the district." "Then, I'll tell you," said the farmer, "he calls *me* rogue, because he is aware I know *him* to be one. He bought a lot of sheep a few months back, and gave me a bill upon Mr. Hart for one hundred dollars *more than the price*; when the bill was paid, I unfortunately spent the whole of the money, and because I have not since been able to pay him his hundred dollars he calls me rogue." If such then are the facilities for peculating enjoyed by Mr. Hart's subordinates, in spite of his active and lynx-eyed vigilance, to what extent must have been his own, with no power whatever to control him!

It is a well known fact that Mr. Hart never suffered any person to pass the sacred threshold of his *private* office; although very illiterate, he kept his multifarious accounts entirely himself, and these were subject to no inspection or audit, but by the Auditor-General in Cape Town. As long as the items of these accounts

were congruent and plausible, they satisfied the auditor; whose power, indeed, was restricted to this limit. Mr. Hart remitted money, the supposed surplus profit of the "establishment," supplying the commissariat; the auditor had merely to reconcile the amount received with Mr. Hart's statement of its growth, and here his function ceased: but the brief examination of this gentleman speaks a volume on the subject:

Cape Town, 11th Nov. 1825.

The Hon. WALTER BENTINCK, Auditor-General, examined.

You have said, on a former examination, that you audited the accounts of the Somerset farm?—I examined the vouchers of the accounts of Somerset farm.

Then you did not see or examine the accounts of the superintendent?—I examined the accounts and books *that were sent by the superintendent.*

Have you found them correct?—Yes, I have.

You are aware that very large profits have been derived by the colonial Government from the supply of rations to the troops through the Government farm?—*I am.*

From what cause do you conceive those profits to have arisen?—From the supplies of cattle and grain to the commissariat.

Have you any knowledge of the prices that were given by the superintendent of the farm for cattle, or of the prices that he obtained from the commissariat department for the rations that he furnished?—I have *no other knowledge than that which a reference to the accounts would enable me to acquire.*

Do you know the reasons that suggested the expediency of establishing Somerset farm?—I can't say that I ever heard what they were, but I *suppose* that it was considered the best mode of supplying the troops.

Did you ever hear that any difficulty or disappointment had occurred in the supply of the troops on the frontier, by the commissariat department, previous to the establishment of the farm?—*No,* I can't say that I have.

In what manner were the balances applied that appear on the accounts of the Somerset farm, from the year 1819 to the year 1821?—I am not informed of the manner in which the balances were disposed of.

Did you ever ask for information upon the subject?—I *do not recollect* that I did.

Did you ever hear or understand to what purposes the balances were applied?—I cannot be positive as to that.

In referring to your report upon the revenues of the year 1822, I observe that you impute the decrease of the land revenue in that year to the falling off in the revenues of the Government farm, on account of agricultural misfortunes; am I to infer, that the profits of the farm were carried to the account of the land revenue?—Yes, *it would appear so.*

In examining the accounts of the land revenue, did you not observe that payments had been made to its credit from the Somerset farm?—Yes, I did.

Have you ever examined the accounts of the agent of Somerset farm?—No, *I do not recollect that I have.*

Here, in reply to the sixth question, we find the auditor's express declaration, that he has no knowledge of the prices either given or obtained, but what are furnished from the accounts of the superintendent himself! So that this "establishment," which has fleeced the poor settlers at the rate of cent. per cent., and unnecessarily burthened the commissariat with a charge of more than 400,000 rix-dollars; which, from its origin to its extinction, has proved a grievance and a curse to the colony; and which stands recorded, upon its own showing, to have *had the capacity* of being a source of abuse, fraud, and peculation, has been subject throughout to no manner of control, and, finally, to no farther investigation by the Commissioners of Inquiry, for aught we yet know, than is furnished by this admirable piece of *non mi ricordo* evidence!

That the profits have been applied as stated in the Report, I mean *that* portion of them permitted to come to light, I very much doubt. I strongly question the item 40,000 rix-dollars for the erection of barracks at Graham's Town, as also the one of 42,160

rix-dollars for building the custom-house at the Kowie; and the sale of the horse Orville is a juggle altogether.

As the history of Orville presents an edifying specimen of his Excellency's talents at horse-dealing, I shall give it in detail. This horse was imported in 1817 by Messrs. Hamilton, Ross, and Co., and sold early in the following year at public auction for 2,700 rix-dollars, which, with the exchange at 123 per cent., gives 243*l.* 3*s.* sterling money. After this period, or, in fact, after the settling of the importer's private account in England, to which alone the consideration of the sterling value, and the exchange upon it, applies, all poor Orville's subsequent mutations in the colony, whether by sale or exchange, were *exclusively referable to colonial value in currency.*

Having been for a short time in possession of the purchaser, whose bargain, be it remembered, was in currency, without the slightest allusion to the rate of exchange, he became the property of his Excellency, who gave for him a *colonial bred mare,* called the Maid of Swellendam, and was transferred, but for what consideration does not appear, to the Groote Post Government farm, where he remained *to cover* till March 1823. His Excellency's *great solicitude for improving the colonial breed* now extending seven hundred miles into the interior, Orville was transferred, by the following order, dated Newlands, 29th March 1822, to the Somerset farm, the exchange being then 177 per cent. and a fraction, which made the price 5,550 rix-dollars:

"Transfer, in *rix-dollars,* from the funds of the Somerset farm, to that of the Groote Post, 400 *pounds sterling,* for the English stallion, then on his

journey to Graham's Town, *ascertaining the rate of the exchange from the colonial pay-master.*"

Some questions here naturally suggest themselves. What could the exchange of 1822 have to do with the price of a horse imported in 1817, after it had in that interval been sold and exchanged? Why should the price now be rated in *sterling* money, while it had first been sold for *currency*, and then exchanged for a colonial bred mare? Why resort to sterling money, and, after a lapse of years, put a greater value upon it, when age and services had, on the contrary, greatly reduced its worth to what it was when sold at 123 per cent. exchange? And why, on that advanced sterling value, again charge at the higher exchange of 177, making a difference of 54 per cent. on the latter only, and then *compel* one Government farm to pay to another the amount, 5,550 rix-dollars, for a deteriorated article, which five years back could only produce, under all the advantages of public competition, 2,700 rix-dollars?

This is only one of his Excellency's *ordinary and regular* horse transactions, although he appears in it in the anomalous character of *both buyer and seller!* By virtue of his *authority*, he *compels* both sale and purchase, and that at prices, in both instances, also determined *by himself!* He has an interest in the proceeds, for he furnishes the commodity, while the capital employed belongs to the public, whose resources are at his command!! Let us recapitulate. His Excellency furnishes to the Groote Post farm, under his own immediate administration, the stallion Orville, procured in the colony for his own particular use. He next supplies the same farm with the stallion Vanguard, imported by him-

self, and now on the farm; both of which horses are his own immediate property, and of course subject to his own arbitrary price. The Groote Post farm is too poor to pay for Vanguard, and his Excellency wants his money. The Groote Post farm excels in breeding horses, and the Somerset "establishment" in breeding rix-dollars; how admirable then his Excellency's plan of reciprocating these advantages by making the latter pay 5,550 rix-dollars for Orville, which the former instantly transfer to his Excellency's pocket as *part payment* only for Vanguard!!!

The Somerset farm, it must be borne in mind, is not a breeding farm, but should the horse be represented as having been sent there with a view to *accommodate the public,* by covering for the farmers in that district, *why put a selling price upon it?* Why not send the horse as a loan from the Groote Post, consigned to the care of the superintendent of the Somerset, both being public farms, and the object of public benefit being common to both? But, after all, *did this horse ever reach the Somerset farm?* Assuredly not at the period inferred from the order of transfer, IF EVER; then why was that farm made to pay for it all? In the proper place I shall give the public the history of a team of mules; some account of the life and adventures of two bulls and a cow, and the private memoirs of the stallions Kutusoff, Sorcerer, Cricketter, and sundry other quadrupeds.

If, in the convincing fact of the rations having risen enormously in price during the Somerset monopoly, and sunk directly at its abandonment, the very suspicious motive of its creation, and its utter inutility were not obvious, by consulting the Report, these

conclusions will be unavoidable: of all men in the colony, the most competent judge of its usefulness is Mr. Deputy Assistant Commissary-General Johnstone. In his examination by the Commissioners of Inquiry, we find this question: "Do you think that, since the year 1818, you should have been able to have provided for the supply of the troops in the district by the ordinary mode of contract, and at as cheap a rate as Mr. Hart has?" He answers: "I think so, certainly." Had I been a commissioner, I should have put the consecutive question, "Do you think you could have done so at a cheaper rate?"—but this would have been hazarding too much; and these important gentlemen declined *forcing* the inquiry. Mr. Bigge, to do him justice, is admirably expert in this branch of his arcanum: he pushes some momentous point, as a sailor would say, to an azimuth; but the moment he sees danger, he checks in his approach. One of the most edifying specimens of his talent in this way is given in his examination of a witness on a horse inquiry. The witness was asked, if he had heard it attributed to his Excellency that he was engaged in horse dealing transactions? and his answer was in the affirmative; but instead of putting what was manifestly the natural rejoinder, "What are the nature of those transactions?" the inquiry was dropped, and the next interrogatory had no more relation to it than asking him his Excellency's age.

I think I have said sufficient to show the public that the Somerset farm had no origin in the necessity pleaded; that the troops were rationed by it at charges unknown to contracts resulting from public tender either before or since its establishment; that a *prima facia* presumption exists of its having re-

alized large sums of money hitherto unaccounted for; that to the extent of these sums, as well as to its stated amount of profit, it has proved an unwarrantable drain upon the home Treasury; that its conduct has been very imperfectly developed to his Majesty's Government, and the financial part of it "*utterly at variance with the instructions of the Lords of the Treasury;*" and, finally, that throughout its duration, it operated as a clog upon all predial industry on the frontier, and was especially oppressive upon the settlers.

Par. 67.---'The manner as well as the periods in which the officers of the commissariat department drew their bills upon the British Treasury, previous to the introduction of the late regulation, by which the rate of exchange of bills drawn upon the British Treasury is fixed, has been a subject of observation by Mr. Burnett; and he has stated that they were made subservient to the interests of the Governor, who was thus enabled to avail himself of the most advantageous opportunities that the fluctuations of exchange presented, both in the operations of drawing for money on England, or of remitting it.'

Par. 68.---'It has been stated to us by the gentleman who was at the head of the commissariat department from the year 1815 to the month of April 1823, that after an estimate of the money required for the public service had been made out, (generally in every month,) and afterwards approved by the commander of the forces, an advertisement for the amount required, either in specie or colonial currency, was inserted in the Gazette, to be paid in bills drawn upon the Lords of the Treasury, and for which tenders were required; these tenders were for some time opened in the presence of the commander of the forces; but, by a later order of the Lords Commissioners of the Treasury, they were opened in the presence of the officer at the head of the commissariat department, and the commissary of accounts. A schedule of the tenders was then made, and, accompanied by a report of the officers of the department, was submitted to the commander of the forces for his approval.'

Par. 69.—' It is further stated by the same officer, that the highest tenders were always accepted, but that he invariably found a disposition on the part of Lord Charles Somerset to resist the combinations that he alleged to have been frequently attempted, by the most open and influential members of the commercial community, to raise the price of specie, or to obtain an influence over the disposal of bills in the maket.'

Par. 70.---' As the rate at which the salaries of those of the civil servants who were paid in sterling was regulated by the average amount of the tenders that had been made to the commissary during each preceding quarter, it has been the subject of frequent observation, that the interests of this class of the colonial servants, at the head of whom was the Governor, would naturally dispose them in favour of a system that was calculated to afford the highest rate of conversion for their salaries in colonial currency, and that no measures of an opposite tendency were likely to be adopted by them, however important to the interests of the colony. Mr. Burnett, however, has gone a step further, and has insinuated that the fluctuations that have taken place in the rates of exchange have alternated with the personal interest and convenience of the Governor, both at periods of drawing or remitting.'

Par. 71.---' Without denying the existence of an interested motive in the civil servants for keeping up the rate of exchange at which their salaries were paid, yet we do not admit that the Governor, in his capacity of commander of the forces, would have been justified in opposing himself to the very systematic vigilance that was shown by the officer at the head of the commissariat department in obtaining the highest rate of premium for the bills that he drew upon the British Treasury.'

Par. 72.---' We have not found that the Governor ever sanctioned the application of any pecuniary influence of the Lombard Bank, or restricted its accommodations with a view to raise the competition for bills at the approach of the periods for drawing. It has been with truth observed by the resident of the bank, that as its accommodations depended solely upon the amount of the commercial deposits, the former necessarily became liable to restriction, at a

period when the deposits were required by the merchants for the purchase of bills.'

Par. 73.—'It appears that in aid of the public service, the commissariat officer was in the habit from time to time of claiming payment of debts due to the colonial Government; and at different periods, especially during the last three years, considerable sums have been received; but at no period were these payments made under circumstances that justify any suspicion of an attempt to raise the premium on bills by diminishing their number; on the other hand, we have not been able to trace the occasional depressions that may have taken place in the rates of exchange to the exertion of any personal interest in the Governor, or to the use of any power, or the adoption of any measures by which such an effect could be produced. Upon the general question, we have already had occasion to express our regret that efficacious measures for repressing the progress of the evils of the depreciated currency had not been resorted to at an early period by the colonial Government.'

As the charge against his Excellency of having tampered with the currency forms one in my petition to the House of Commons, I might be justified in pleading the impolicy of letting the enemy into my camp, and leave the question to its fate in Parliament, where it must ultimately be either supported or disproved; but, as the commissioners volunteer a defence for his Lordship, it becomes necessary to say a few words upon the subject.

I am well aware, that charges of this sort are very difficult to bring home; as it is impossible to penetrate into the recesses of the heart, and pronounce upon human motive: but where a continued series of circumstances all contribute to one result, they form so many overt acts of the intention in the party promoting them, as to become tantamount to the most positive proof. If Lord Charles Somerset had the power of keeping down the rate of exchange, and

neglected to exercise it, the proof of this is an overt act of the charge; and that he *had* that power, and *did* neglect to exercise it, I shall very speedily establish. It will be, however, necessary first to give a brief outline of the currency question itself.

The first issue of paper-money was in 1782, when the Dutch Government, to relieve the privations of the colonists, produced by its own embarrassment, ordered an issue to the extent of 47,695 rix-dollars, the accepted value of the rix-dollar being equal to two Dutch guilders. This sum was afterwards from time to increased, though for many years successively only as an adjunct to the metallic medium, till the latter altogether disappeared. At the last taking of the colony the paper currency then in circulation amounted to 2,086,000 rix-dollars; subsequently, different sums have still been added, not for the express purpose of increasing the total in circulation, but for specific ones, duly accounted for; and the whole now in circulation is 3,169,197 rix-dollars, which, though it may appear a large amount, is barely sufficient for the daily wants of so extensive a territory, and widely scattered a population.

The currency being thus the only medium of all pecuniary transactions, it, of course, became the representative of every description of property in the colony, moveable and immoveable; and finding so large an amount of it in circulation at the time of its capture, it was absolutely necessary to give it the greatest possible stability, and to stamp upon it the pawned faith of Great Britain, as a pledge that its value was what it represented. This was in the first instance felt and done. The capitulation of 1806 provides and guarantees the currency at its then

value; and Sir David Baird, impressed with the importance of following up this guarantee, issued within a few days of the capture, (25th January 1826,) a proclamation regulating the relative value of the paper currency, and the several coins in circulation, according to the following tariff, which was some time after confirmed by Lord Macartney in a similar proclamation:

TARIFF.

| | | | £ | s | d |
|---|---|---|---|---|---|
| A Guinea | 44 Skillings | 264 Stivers | 1 | 2 | 0 |
| A Doubloon | 160 | 960 | 4 | 0 | 0 |
| A Johannes | 80 | 480 | 2 | 0 | 0 |
| A Ducat | 19 | 114 | 0 | 9 | 6 |
| A Venetian Sequin | 19 | 114 | 0 | 9 | 6 |
| A Gold Mohr | 15 Sicca Rupees | | 1 | 17 | 6 |
| A Pagoda | 16 Skillings | 96 | 0 | 8 | 0 |
| A Spanish Dollar | 10 | 60 | 0 | 5 | 0 |
| A Rupee | 5 | 30 | 0 | 2 | 6 |
| An English Shilling | 2 | 12 | 0 | 1 | 0 |
| Copper Coin | | 2 | 0 | 0 | 1 |

These proclamations promoted universal confidence; every individual felt himself secure, and continued, without hesitation, to receive the paper currency in exchange for his most substantial property; and again disbursed it in perfect security, in whatever manner he thought best; for he considered his rix-dollar currency to be fully equal to four shillings sterling. In this way it continued for some time, fluctuating in a slight degree from natural causes, but with a constant tendency to rise against the colony, only to be accounted for in the circumstance of the *influential* and *major part of the civil servants being paid their salaries in sterling*. These, and the military servants of the Government, were interested in its rise, and the only astonishment is, that, assailed by such an attack of cupidity, the four shilling rix-dollar is now worth eighteenpence sterling; and that, with their

inflexible determination to support the grand promoter of this mischief in his government, his Majesty's ministers did not long since resort to the obnoxious measure they have so recently been compelled to adopt.

To say the rate of exchange has risen with such frightful rapidity from natural causes, is to assert what cannot be supported by proof; and although I have not, at present, access to the necessary papers, I will venture to predict that, on inspecting the import and export accounts, the balance of trade,—the great lever acting on the exchanges in all other countries,—will at once disprove the assertion. If, with the admission of this postulate, it should be said that Lord Charles Somerset and the sterling paid servants derive no real benefit from the higher exchange; inasmuch as, however many dollars may go to the pound, they receive but a corresponding value to their sterling salaries, I deny the assertion, and can readily show its fallacy. The boor, who has an unconquerable aversion to mutations of any kind, and knows as much about agio and exchange as he does of calculating the odds at Newmarket, has an inherent veneration for the old Kaap Stadt rix-daalder; and no argument can so abate its integrity, in his eyes, as to make him think it represents one stiver less than its original four shillings value; and, upon this estimate, will he continue to make all his sales and purchases to his dying day. If, therefore, his Excellency, who is fond of dealing in mortgages as well as horses, saddles, wood, forage, or anything else, goes to market with one years' salary, and the exchange at par, he has but 50,000 dollars to lay out; but at the present rate, he receives *one hundred and fifty thousand* for the same

salary, which enables him to purchase to three times the extent from the ignorant and uninitiated; and subsequently to effect his sales at the deteriorated value of the currency! I have often heard of breeding money, but this is a matrix in which it really appears *possible* to generate it. It is upon this thesis of the depreciated currency, that his Excellency's advocates extenuate his horse sales; they say, considering the expenses of importation, that a beautiful English *blemished* stallion cannot be dear at 800*l.* sterling, or 10,000 rix-dollars; but they suppress the fact, that the boor considers 10,000 rix-dollars fully equivalent to *two thousand pounds*, and that he is the last of created beings to give such a preposterous price for a horse without a *quid pro quo*.

PROGRESSIVE STATE OF THE EXCHANGE AT THE CAPE OF GOOD HOPE, (TAKING THE AVERAGE PER QUARTER,) DURING THE GOVERNMENT OF LORD CHARLES SOMERSET.

| 1814. | | 1817. | | 1820. | |
|---|---|---|---|---|---|
| March | 84 1-5th | March | 112⅝th | March | 123 5-12th |
| June | 77 3-10 | June | 120¾ | June | 122⅜ |
| September | 78¼ | September | 133 1-6 | September | 131¼ |
| December | 81¼ | December | 127 9-16 | December | 131 5-64 |
| **1815.** | | **1818.** | | **1821.** | |
| March | 82⅛ | March | 131½ | March | 133 |
| June | 80 10-16 | June | 131 1-5 | June | 132 9-16 |
| September | 82⅜ | September | 133½ | September | 145⅛ |
| December | 81¼ | December | 121 7-16 | December | 163 5-48 |
| **1816.** | | **1819.** | | **1822.** | |
| March | 85 3-5 | March | 105 5-12 | March | 174¼ |
| June | 88 5-7 | June | 112 1-20 | June | 189 1-6 |
| September | 92⅜ | September | 121¾ | September | 180 |
| December | 107½ | December | 120½ | December | 148 |

| 1823. | | 1824. | |
|---|---|---|---|
| March | 139 | March | 169 |
| June | 173 | June | 195 |
| September | 173 | September | 180 |
| December | 160 | December | 180 |

The above table will show the effect, or rather defect, of British management at the Cape of Good Hope, and the appalling rapidity with which the currency has depreciated during the administration of Lord Charles Somerset. It stands also a monument

of reproach to the English Government; that it should issue paper-money to the colonists at four shillings, then adopt measures which degrade it, and, finally, buy it up at eighteen pence.

Having shown that his Excellency and the members of his Government have a powerful interest in keeping up the rate of exchange, it remains to point out in what instances that interest has been exerted. In the month of June 1822, the exchange had risen to an alarming height, varying from 185 to 205 per cent.; when, on opening the tenders for the commissariat drawing it, was found that only 4630*l.* was offered for, at above 101 per cent.; this offer was accepted; but the next tender for 4000*l.* at 100 and 101 per cent., made by Mr. Hamilton Ross, and still within the amount required by the commissariat for the public service, *was peremptorily rejected!* This is a fact in evidence before the Commissioners of Inquiry, and of itself quite sufficient to support my charge in Parliament, if others were wanting. It is an act of palpable dereliction in his Excellency the Governor, which no sublety can evade, nor apology extenuate, and the very excuse projected for it by the commissioners, that "the Governor, in *his capacity of* COMMANDER OF THE FORCES," was not justified in opposing himself to the *systematic vigilance* of the commissariat, in obtaining the highest rate of premium for its bills upon the British Treasury, is only a striking proof of the monstrousness of that system which appoints military men to the discharge of such clashing and irreconcileable duties. Here we see Lord Charles Somerset, as Governor of the Cape of Good Hope, in a triple character, the strict duties of each being diametrically opposed to the

interests of some portion of the community. As a private individual, dealing largely in horses and other commodities, he is interested in keeping up the exchange, that he may obtain the greater number of rix-dollars for his sterling salary; as civil Governor and conservator of the general interest, it is his duty to give tone and vigour to the colonial commerce, by adopting measures to keep *down* the rate of exchange; while, in his capacity of Commander of the forces, the commissioners make it imperative upon him to keep it *up*, and consider this the *higher* function, by which all other duties are superseded!

With the fact established of the tenders being rejected, and the Assistant-Commissary-General's admission, that the consequent wants of his department were supplied from this very suspicious, but *convenient* colonial debt; what just excuse can be offered for his lordship's neglecting to enforce their acceptance? Mr. Ross's object was manifestly to get down the exchange for the benefit of the whole colony, the *sterling paid salary people alone excepted*, and with the frightful premium upon treasury-bills, then wrung from the distresses of the merchants, it was his Excellency's duty to have encouraged and promoted every exertion in the commercial body to decrease it. Here is a tender in the ordinary course, just and imperative in its demand for acceptance. "No," says the commissary, "you dont offer me enough rix-dollars for my pound sterling, therefore I refuse it; I am in no hurry, I can get supplied elsewhere, but as I know you cannot, we shall see who will buckle too first." And this unheard-of violation of a published engagement is sanctioned by his Excellency: first,

positively, as commander of the forces; and then, negatively, by his neglecting to discontinue it as civil governor of the colony. Messrs. Lee and Cock, the contractors at Graham's Town, might, with just as much propriety and conscience, have refused rations to the troops, because flour cost twenty-three rix dollars per muid.

But if, after this convincing statement, the charge yet wanted confirmation, there is still, if possible, a more decisive proof of it in another proceeding of his Excellency. The salaries to the civil servants were paid by the colonial paymaster, under his Excellency's warrant, on an average of *all* bills drawn by the commissariat during that quarter, instead of only on the three highest tenders; an improvement effected, not by Lord Charles Somerset, as attributed to him by Mr. Rogerson, but by Colonel Bird. It has happened that, when the drawings have proved favourable for the colony, by the exchange getting a little down, his Excellency has ordered the words "*for the payment of the civil servants,*" to be quashed in the warrants made out at the end of the quarter, *in order to take in the next drawing, when the average of the tenders had considerably advanced!* If these are not proofs that his Excellency has tampered with the exchange, influenced its fluctuations, and made those fluctuations subservient to his own interest, there is no method of substantiation extant to bring home delinquency to any governor in being.

It is, curiously enough, observed by the commissioners, in the sixty-ninth paragraph of the Report, that the assistant-commissary "*invariably* found a disposition, on the part of Lord Charles Somerset, to

resist the combinations of the most opulent and influential of the commercial community to raise the price of specie, or to obtain an influence over the disposal of bills in the market." *This is precisely my accusation against his lordship!* For by depressing the price of specie, and opposing this combination of the merchants to raise the value of the paper currency, his Excellency was doing the *very thing he is charged with*, committing a foul injustice upon the whole colony, the *sterling paid servants always excepted*, by running *up* the rate of exchange. And yet, in the very teeth of this palpable admission, we find the same consistent commissary stating, in the plenitude of his zeal, before the same commissioners, "that he observed Lord Charles Somerset was impressed with a strong desire to keep *down* the rate of exchange for the benefit of the colony!!" It is a point gained to find his lordship admits that a low exchange *would* benefit the colony; then how does he reconcile this opinion with the fact in evidence, that he has *invariably* resisted all the endeavours of the merchants to keep it down?

I have only cited the foregoing cases to satisfy the public that I have not, loosely, hazarded a charge of a grave nature against a high public functionary without very sufficient grounds; and if the conduct of his Excellency at the Cape should become the subject of Parliamentary inquiry, that, as well as many others, will be found fully borne out by *overwhelming* proofs.

Par. 74.—The grievance with which Mr. Burnett concludes his statement, relates to the criminal prosecution that was instituted against him by the fiscal, for addressing a memorial to the Governor, in which he charged the commissioners of circuit, who tried his causes at Graham's Town in the year 1823, with gross ignorance of their duty, injustice,

oppression and corruption. A translation of the proceedings is annexed, and we find that the memorial in which these charges were made was transmitted by the secretary to Government to the fiscal, with a direction to him to prosecute Mr. Bishop Burnett for his libellous attack upon the character of the two commissioners, Messrs. Truter and Borcherds. The prosecution was delayed for some time on account of the distance of the district of Albany from the seat of judicature at Cape Town; the illness of Mr. Burnett after his arrival, and the application that he made for the attendance of a witness, and copies and translations of the proceedings of the court of circuit.'

Par. 75.—'He complains that his applications to the secretary of the court of justice had not been attended to; and it appears that under the expiration of his arrival in Cape Town, an immediate answer was not sent, and the copies were not undertaken until he had made two applications through the secretary of the court of justice, who gave orders that they should be made for him, provided he would point out the documents that he required. While the copies and translations were in course of preparation, he stated to the commissioners of the court of justice, that if they were ready to pronounce sentence upon the case as it stood, he was prepared to receive it, and would dispense with the copies that he had required.'

Par. 76.—'The commissioners declined to give any pledge as to the course they would pursue at the trial, and Bishop Burnett declared that he was ready to appear before them, and to receive judgment. Notwithstanding this declaration, he prayed for further time, until the copies should be executed; and without making further complaint of not having received them, he declared his willingness to appear on the day that was ultimately fixed by the court. We find that the translations were delivered to him before that day, and that they were in his possession during his attendance.'

The two latter paragraphs are altogether a misrepresentation of facts. The secretary's excuse for withholding the copies of the trials, under the expec-

tation of my arrival in Cape Town, is all a fallacy; and the commissioners well know it to be one. They know what anxiety I manifested at Graham's Town to obtain them; and both at the landdrost's office there, and the Court of Justice in Cape Town, my various but fruitless applications will be found recorded.

These passages present another striking instance of that disposition in the commissioners to twist and turn every thing to my disadvantage. It would seem, from their statement, that I had vacillated in my application for the papers,—no doubt with a view to make them appear unimportant to the conduct of my defence;—and a *direct falsehood* is brought forward to strengthen this insinuation. It was impossible that I could relax either in my desire or my exertions to procure them; for they were not merely indispensable to my defence, but to the conduct of the causes in appeal likewise; and especially important to me in this country. The truth of the case is as follows:—The trial, after two postponements, from the very circumstance of these papers not having been delivered, proceeded, with my consent, up to the period of making my defence; and then was a third time delayed expressly from this same cause. It was at this juncture represented to me, that the court would not accord with the claim of the fiscal, but moderate the punishment to six or perhaps twelve months' imprisonment; a prospect infinitely more gloomy than banishment altogether: preferring, therefore, the sentence of banishment, I wrote as follows to the secretary:

Sir, Cape Town, 22d July 1824.

As I understood the Commissioners, upon my trial for libel, to

intimate that their decision would not be influenced by any thing I might bring forward in my defence, and as that defence must necessarily embrace some very serious charges against the colonial Government, I have come to a determination, which I request you will make known to the Commissioners forthwith.

If those gentlemen, upon the merits of my case, as it now stands, will accord the full claim of his Majesty's fiscal, and the executive power will order the sentence to be enforced, I am prepared to receive the judgment of the Court whenever called upon, without offering any defence whatever.

My object in wishing to ascertain these points is merely that, if another course is contemplated, I may not be subjected to an interminable imprisonment without showing, in my defence, that such imprisonment would be flagrantly unjust; and I candidly confess, that, once within the walls of your prison, I never should expect to quit them with life. I have the honour to be, Sir, your obedient servant,

B. BURNETT.

D. F. Bennangé, Esq.

Now in this letter there is not one word about the papers, although the commissioners so boldly assert that I dispensed with them; nor can they show any admission on my part to this effect; but I shall not take advantage of this, by concealing, what I safely might, the fact of my having observed to the translator, who called upon me, that he need not busy himself so much as he had done in preparing the papers, as, in consequence of my declining to make any defence, they would not be required *for that purpose;* but that, as it was impossible to say how long I might be left in the colony after sentence, he would see the necessity of letting me have them as soon as possible. This was intimated to the court; but an after reflection arising, that if I permitted the sentence to pass without first securing the papers, I might in all probability not get them at all, I again made their delivery indispensable, and wrote the secretary to that effect. It is very true that, without making further

complaint, I "declared my unwillingness to appear on the day fixed by the court;" but for the best of all possible reasons—*the papers had been sent to me.* How different this to the version of the commissioners!

Par. 77.—'An admission having been made by Mr. Burnett, of his having composed and sent the memorial to the Governor, the fiscal addressed to the court some observations upon the nature of the offence that was stated in the act of accusation, in which Mr. Burnett was charged with maliciously intending to expose to public contempt the judicial dignity of the commissioners of circuit, and with having defamed them, by publishing and presenting a certain libellous writing in the form of a memorial, addressed to his Excellency the Governor of this colony, praying that he would order a revision by the court of justice of the proceedings held before the commission of circuit, and accusing the two members of prejudice, partiality, and a corrupt violation of the laws, and declaring that they had been guilty of manifest injustice, and a wanton assassination of his character, tending to prejudice the causes wherein he was appellant, and to forestal a corresponding judgment; and that he had further declared the proceeding against him to be one of flagrant injustice, of legal error, and perversion of extra-judicial procedure, of scandalous oppression and intolerable persecution.'

Par. 78. 'The fiscal stated to the court that the prosecution was founded upon the Roman law, which, as subsidiary to the Dutch law and to local regulations, he contended was the rule by which the courts of the colony were bound, and had been accustomed to proceed both in civil and criminal cases. He denied the right of Mr. Burnett to appeal to English authority upon this charge, or that of being tried by any other law than that which was in existence at the period of the last surrender of the colony to the British arms, or had since received the sanction of the British Government. He then quoted the 45th and 47th laws of the 10th title and 47th book of the Pandects, in the first of which it is declared, that any person who shall have attacked the

reputation of another in a writing delivered to the chief of the Government, shall be liable to be prosecuted for the crime of "*injuria scripta;*" and in the second, where extraordinary punishments are declared to be annexed to this offence, varied according to the condition and motive of the criminal, and in which that of temporary banishment is included.'

Par. 79.---' He closed his address to the court with a claim for its sentence and condemnation of Mr. Burnett to banishment from the colony for the space of five years, and imprisonment in a place of security until an opportunity offered for carrying the sentence into execution.

Par. 80.---' Mr. Burnett in his defence denied the application of the principles and enactments of the Roman law to the charge that was made against him, and appealed to certain decisions of the English courts, by which it had been determined that memorials addressed to the king or parliament, complaining of injustice or oppression, and praying for redress, are not punishable as libels. He declined entering upon any discussion of the judicial treatment he had experienced from the judges or from the Government, as he conceived that such a course would only expose him to further prosecution, and to more severe punishment.'

Par. 81.---' The court in its sentence declared him to be guilty of an open violation of the laws, tending to disturb the internal tranquillity of the colony, and to lessen the dignity and power of the judicial authorities. It therefore condemned him "to be banished from the colony for five years, on pain of more severe punishment in case of his return, and to be confined in some secure place until an opportunity should occur of his being sent away.

Par. 82.---' Referring to the former proceedings of the colonial courts, as well as to the positive enactments contained in proclamations of the Dutch governors, no doubt we think can be entertained of the authority upon which this prosecution was founded.'

Par. 83.---' It has been frequently declared that the colonial courts were to be guided by local proclamations; by such of the Batavian statutes as were received and promulgated in the colony, and by the laws of the several states of

Holland, explained by the Roman laws, to which appeal was to be made where the former laws are silent, inapplicable or obscure. The fiscal has stated to us that he was not able to find any enactment in the Dutch or Batavian statutes, or yet in the local proclamations that was directly applicable to the case. The laws of the United States of Holland and Flanders were founded upon the Roman law, and these systems in combination have received the appellation of the Roman-Dutch law, and form the subject of a treatise composed by a learned civilian of Holland, that has been translated into the English language, and under the auspices of your Lordship, has been introduced as authority in the tribunals of those colonies that have been added to the British dominions, and in which the Dutch laws have been retained.'

Par. 84.---' We believe that the British settlers, with whom Mr. Burnett emigrated to this colony, were duly informed before their departure from England of the nature of the laws by which their conduct was to be regulated in it; and we are not aware that the right that Mr. Burnett claimed on his own behalf, and that of the other emigrants, of being tried by the British laws, has been conceded to British subjects removing voluntarily from their own country to a British colony in which a system of foreign law had been found to exist, and had been continued under the authority that his Majesty derived from conquest and cession.

Par. 85.---' In the present instance Mr. Burnett undoubtedly was made to feel the difference between the system of law under which he had lived, and that to which he had thus voluntarily subjected himself, and by which the act of addressing a memorial to the Governor of the colony, complaining in violent and contumelious language of the conduct of certain functionaries, and praying for a redress of the injuries he had suffered, was in itself, and independently of all other circumstances attending it, considered and punished as a criminal act. By the authority of the law quoted by the fiscal, its criminal character and its punishment were defined; and although we cannot concur in the description, or in the consequences that are ascribed to the offence, in the act of accusation, that of being " a public

violation of the laws, and tending to disturb the internal peace of the colony," yet it is impossible not to discover in the composition of the memorial, an intention on the part of Mr. Burnett to defame the characters of the persons denounced in it, and a desire of gratifying personal vengeance, cloaked under the specious pretext of denouncing injustice and of obtaining redress.

It would occupy a space much beyond my limits, to discuss the subject of my banishment from the Cape of Good Hope, if I had either talents or legal knowledge for the undertaking: and from the circumstance of my having determined to bring the question to issue before the judges of the land, it is not necessary that I should. There are one or two points, however, in the commissioners' Report upon it, that naturally elicit some observation.

On referring to my reply to the arguments of the fiscal, which the commissioners are pleased to call my "defence," *my* views of the illegality of the whole of the proceedings will appear; but as these gentlemen give them the sanction of their approval, I cannot forbear contrasting such a declaration with what might be esteemed the essential knowledge of Mr. Bigge as a lawyer.

First, my banishment was illegal, inasmuch as 'there is no constitutional law more clear, than that the *subjects of England carry with them, wherever they go, within the realm of England, the laws and liberties of their country.*" From the moment of its formal cession, the Cape of Good Hope became an integral portion of the British empire, exacting the allegiance of its colonists to the crown, as subjects of the English realm; and allegiance to a state presupposes a participation in the benefits of its laws. It has been solemnly adjudged, "that the colonies of the king-

dom of England are part of its dominions; and the inhabitants within the king's *allegiance*, and *subject to the laws of England.*" It remains, then, indisputable, that they have a *right* to claim, and are *entitled* to the protection of the *same laws* by which they are held to their *allegiance*, and the act of any governor, who abets and sanctions the violation of this right, is a *high crime against the parent state.*

Secondly, if the fiscal's doctrine was sound, that the Roman law is subsidiary to the Dutch law and local regulations, it had no equitable application to my case, to which the crime "injuria scripta" could not apply, inasmuch as the law quoted from the pandects was an enactment of the most corrupt period of the Roman empire, solely adopted for the correction of a particular and local abuse, inapplicable to any previous or subsequent condition of society, and foreign in its contemplation to the offence with which I was charged.

And finally, that the Roman law is NOT SUBSIDIARY TO THE DUTCH LAW AND LOCAL REGULATIONS, the whole of the Dutch laws having, long since, been repealed and abrogated, and the Code Napoleon substituted in their stead.

It is a well known fact at the Cape, that the poor fiscal underwent all but mortal agony in straining out a law to suit the taste of his patron. My banishment was a preordination he was peremptorily desired to justify, and if he had failed in raking out this ridiculous authority from the pandects, I have no doubt but an *ex post facto* proclamation would soon have been manufactured for the occasion. *The Governor willed it*, and who, at the Cape of Good Hope, ever had the *temerity* to say him nay? The recent

trial of Mr. Cooke, who was acquitted, and of the unfortunate Edwards, who was convicted, with no shade of difference in the charged offence, but what made favourably for the latter—was another stumbling-block in the way of the fiscal: the public feeling was excited at the monstrous incongruity of these decisions. Mr. Cooke had, with great spirit and propriety, denounced the guilt of a public servant to the Lords of the Treasury, giving his memorial publicity; and bringing into discussion facts not generally known; Mr. Edwards had written two *private* letters to his Excellency, only detailing circumstances of blazing notoriety, and communicating their contents to no one, consequently, of the two, the latter was the least culpable, yet Mr. Cooke was honourably acquitted, as in justice he ought to have been, and poor Edwards sentenced to *seven years' transportation, as a felon!* Now, let us convert the case, and put Mr. Blair, whom Mr. Cooke was tried for libelling, on the imperial seat of government, and degrade Lord Charles Somerset to the condition of a custom-house officer—*What then would have been the judgment?* These were considerations not at all calculated to smooth Mr. Denyssen's path: they led him to look with a little more caution, not untinctured with anxiety, into his authorities, for thus sporting with the liberties of the British subject, at the mere beck of his tyrant. I can produce three gentlemen to whom he confessed his dilemma, and that he positively could not rummage out an authority which justified the prosecution. That it was unjustifiable is manifest, and I am well satisfied that this is the opinion of the soundest constitutional lawyers in England.

The commissioners express their belief that the British settlers were duly informed before their departure from England of the nature of the laws by which their conduct was to be regulated in the colony. I am not aware that this is the fact, but were it so, the illegality of this prosecution is not the less apparent, for I was neither tried by colonial law, the laws of Holland, *nor one subsidiary to either*, the Code Napoleon having twenty years since abolished this barbarous subserviency to the pandects; and as, during a part of that period, the colony belonged to the Dutch, so also must its judicatory have been formed from the laws of Holland.

It will not, I trust, escape the observation of the public, that although the commissioners do not go the full length of the more pliant fiscal in calling my *private* memorial to his Excellency, "a *public* violation of the laws tending to disturb the internal peace of the colony," yet they deny *me* the benefit of this solecism, and impute to the composition of the memorial a desire on my part to defame the characters of the persons it denounced, from motives of personal vengeance! I believe I should consult my own dignity best in repelling the audacity of this insult by contemptuously referring them to my quotation in the title-page, but my duty to the public exacts something more.

Personal vengeance is a feeling I never yet entertained towards any being, however deeply he might have injured me; it is not then probable I should experience it towards two men whom I had never seen or heard of till they adjudicated in the causes at issue between Mr. Hart and myself. Their judicial conduct of those causes richly merited the terms I

applied to it in my memorial to the Governor; in the composition of which I was actuated by no other feeling than an honest indignation at the venality and disgusting prostitution they exhibited. But how could I defame their characters by writing a memorial to his Excellency, the contents of which were unknown to any mortal but ourselves? They could not sit prejudiced in his opinion for doing what was so decidedly in unison with his known wishes; therefore how were they defamed? If detraction had been my object, I should have blazoned my sentiments to the public; but, on the contrary, I quietly denounced them to the highest authority from whom, in the event of my charges proving founded, redress was to flow. Neither in the event of my having given this memorial publicity, should I have defamed them, for the public beset me with the sentiments it expressed at every turn, and in language much more indicatory of vengeance than I had thought proper to use.

The commissioners are not very scrupulous in assigning motives to my conduct, any more than they, as well as Earl Bathurst, are in forming their own constructions from Mr. D'Escury's—monstrous as this violation is of every principle of fair reasoning. The avowed, the manifest motive of an act does not suit these gentlemen, as it militates against the purpose they have in hand; they must, therefore, seek for one better adapted to their views, and the reader will not fail to remark the pertinacity with which they invariably cling to the most disreputable.

But this is all in admirable keeping, O no! If these judges even *were* corrupt, or Lord Charles Somerset delinquent, or the commissioners themselves

time-serving, they must not be denounced—certainly not; they are of that privileged class which, innoculated with the immunities of aristocracy, may stalk about the earth, trampling upon and crushing with impunity all who should be found bold enough to resist the pestiferous contagion they cast about them.

Par. 86.—'It will not, however, have escaped your Lordship's observation, that Mr. Burnett had entered appeals against the several actions, in which he asserted that the injustice and corrupt partiality of the commissioners of circuit had been manifested, and it was, therefore, competent to him to have pursued those appeals, and to have claimed the professional assistance that is always accorded to those whose poverty entitles them to seek it. He, however, neglected to pursue any course that might have enabled him to take advantage of this ordinary mode of redress, and suffered the term of twelve weeks to elapse, within which appeals from sentences delivered in the district of Uitenhage to the high court, are required to be prosecuted. We are not aware of any equitable ground upon which Mr. Burnett ought now to be admitted to recover his right of appeal; nor do we think that in the event of any new investigation being instituted, it would be followed by different results. The plea, therefore, of being compelled to apply to the Governor by memorial, and to represent the conduct of the commissioners in its true light, by the use of the terms set forth in the act of accusation, is destitute of foundation, and it is only necessary to refer to the memorial itself for an exposition of the real motives that gave rise to it. Censurable as these were, and criminal when coupled with the act itself, and tried according to the principles of the Roman law, we think that as there is no proof that the memorial was attended with any greater degree of publicity than that of addressing it to the Governor, the fiscal would better have consulted the feelings of the community if he had exercised the discretion with which his instructions invest him, and had declined a prosecution that had the effect of exciting the public attention, and perhaps its sympathy, in favour of a person who, by his

violence of language and demeanour had deprived himself of all claims to public estimation and respect.

I have already satisfactorily explained that, as well from the peculiar dilemma in which I was placed, as from the illegal act of the colonial authorities in withholding the papers, it never was in my power to pursue the appeals; it is, therefore, cruelly invidious in the commissioners to reproach me with an omission to which I was not a party, as it is insulting and unmanly to taunt me with a poverty produced by persecution and injustice. The commissioners might have spared themselves any concern as to my attempting a "recovery," as they term it, of my right to appeal—that which was never lost cannot be well restored, —and this is a right I most assuredly *never* forfeited. At any event, they have taken effectual measures to prevent my exercising it, as after this second palpable prejudication, I should be a madman to attempt it, too well acquainted as I am with Cape usage, to be ignorant that there is no judicial body there, corporate or individual, that would *dare* adjudicate at variance with these expressed opinions of the Commissioners of Inquiry.

Here too, is another instance of that false reasoning, so constantly resorted to by the commissioners. They sit down to their inquiry, predetermined to find or to convert every thing to their wishes; and, where a difficulty not easily superable presents itself, they throw aside the fact as it stands in strict reality, establish their own hypothesis, and then readily come at the conclusions they require. I am not aware that I stand in need of any plea to justify the memorial to the Governor; but if I did, the one set forth will fully acquit me. The fact stands on record, that *I could*

*not get the papers*, and it is equally apparent, that without the papers I could not pursue the appeals. I was not then merely incited by the palpable injustice of these men, but by the further illegality of withholding what by law I was entitled to; and surely it was an act of propriety, if not of imperative duty, to denounce such monstrous oppression to the Governor, and expose a system of folly and corruption, so flagrant and so inscrutable as to extract from Mr. Commissioner Bigge, the emphatic exclamation—" Mr. Burnett, *it is all a hash!*"

If the commissioners sought to extenuate this prosecution, *which they nevertheless condemn*, by the projection of just and veritable excuses, I should submit no remark upon their opinions: but here, in their selection of a palliative, they have thought proper to advance a *base*, *deliberate falsehood*, for no act of my life at the Cape of Good Hope ever exhibited the slightest " violence of demeanor;" and as whatever force of language persecution wrung from me, was only contained in my correspondence with the colonial functionaries, the public, necessarily unacquainted with it, had not the pretension stated by the commissioners for withholding its estimation and respect. Nor in truth did it; for those who dared broach their opinions, without entailing ruin on themselves, were just enough to condemn the measures in operation against me; to applaud the manly perseverance with which I opposed them, and to compliment me with an assurance, that to my zeal and intrepidity the colony looked mainly for relief.

Par. 87.—' During our residence in the Albany district, in the early part of the year 1824, we observed a general disposition' amongst the respectable classes of the settlers to

> withdraw themselves from all connection with Mr. Burnett, and to disclaim all community with him in any public proceeding; and we believe that neither the termination of his connection with the district, nor the embarrassments in which he had involved himself, excited any feelings of pity or regret.

No finer illustration can be given of the character of these gentlemen's mission to the Cape of Good Hope, than what they have themselves furnished in this paragraph; for we here see the effects of a lingering apprehension, that without debasing my worth as a private individual, they may not have said sufficient to deprive me of sympathy in this country for the persecution I have endured. They have, by falsehood and distortion, reversed the whole fabric of the little history they scrutinized; they have judged me with injustice; they have cast obloquy upon me, from which I am morally and politically exempt; they have imputed motives to me which never had existence; and, finally, they wind up with an assertion as unfounded as the motive for fabricating it is base and detestable.

It would be invidious to point out the considerations by which I was actuated; but during my abode in Albany there were but three families among the emigrants with whom I formed any intimate acquaintance; these were Major Pigot's, Capt. Campbell's, and Mr. Philips's, and, considering the distance we lived apart, the most cordial intercourse and exchange of good offices were maintained up to the period of my final departure from the district, with the exception only of a coolness between Mr. Phillips and myself, proceeding from a private misunderstanding quite unconnected with my position with the Government. Now it so happened that his Majesty's

commissioners invited these three gentlemen to dine with them, a courtesy they extended to *no other settler*; from which it is fair to infer that my conduct in this respect had been at least judicious, or that if there were other persons with equal pretension to this *high honour*, they had insulted them by implication.

I seldom preserve private letters, but I find a few from the above gentlemen among my papers, one or two of which from each I shall take the liberty of publishing to give a flat contradiction to this assertion; and I feel persuaded they will forgive me this little breach of confidence in their anxiety to see me vindicated from aspersion, and the necessity I am under of neglecting no means calculated to promote this end. The first is from Captain Campbell, and dated but a few weeks anterior to the arrival of the commissioners:—

MY DEAR SIR, Graham's Town, February 8. 1823.

I was very anxious to send my memorial to the Governor by this weeks' post, but I fear I shall not be able. I have been occupied in writing innumerable letters, and I set off to-morrow in the direction of Upper Bushman's River. It will be nearly the end of the week before I return, by which time you will have made great progress in our home statement.

Mrs. Campbell has been extremely ill for several days back. Dr. Smith was so kind as to call on his way to Caffre land. Should you see him before my return, will you beg of him to visit her again, if he can conveniently do so.

I understand Colonel Scott returned this day. I was from home when the troop passed my house, so that I have not heard what has been the result of their observations.

This day is overwhelmingly hot; and I think it very probable it will be followed by rain. This may do your garden good, but a vile Bush buck got into mine a few nights back, and destroyed the little that was in it.

Mrs. Campbell unites with me in best regards to Mrs. Burnett. Yours always,

D. CAMPBELL.

B. Burnett, Esq.

MY DEAR SIR, Lampeter, Monday night.

Many thanks to you and Mrs. Burnett for your kind and welcome present, in which Mrs. Phillips and all the family cordially unite. They are the finest peaches they have received at Lampeter in Africa; reminded them of olden times, and to make it quite à propros, they arrived when the table-cloth was removing, and the dessert *should* have come in.

Bathurst shares the fate of Fredericksburg. The landdrost's clerk, Mr. Dyason, has orders to repair to-morrow to Graham's Town; such is the news Mr. Collis brought me this morning; their decay has been more rapid than their rise. I hope to see you on Thursday morning. Your servant James has only given me a moment to thank you. I thought he would have staid the night.

Mrs. Phillips unites with me in best respects to Mrs. Burnett, and believe me, my dear Sir, very sincerely yours,

T. PHILLIPS.

B. Burnett, Esq.

MY DEAR SIR,

I am reluctantly obliged to give up my excursion, for several reasons. It is of no use to increase my stock, for I am nightly in dread of losing what I have.

What do you mean to do? Will the weather alter your intention of going? If it does not, the boy who takes this, can convoy Mrs. Burnett here. The ladies will be anxiously looking for her. I should myself have taken a ride over, but with frequent going out last night in the rain, I have got a severe sore throat. Yours ever,

T. PHILLIPS.

MY DEAR SIR, Pigot Park, Sunday.

As I shall see you in town to-morrow or Tuesday, we will then communicate on the subject of your letter. I take in Mrs. Pigot and my daughters to Colonel Scott's ball, and return home most probably on Wednesday.

Mrs. P. will write a line to Mrs. Burnett. The peach* you sent

* This was a peach measuring eight inches and a half in circumference, gathered from a seedling only in the second year of its growth.

is the finest I have seen in Africa. It will be a valuable sort. Believe me, yours sincerely and truly,

G. PIGOT.

B. Burnett, Esq.

DEAR BURNETT, Pigot Park, October 16, 1823.

I am anxious to hear how you came off in the late storm. My house is seriously damaged, and my garden and tillage partly washed away. We are in dread of the two sitting-rooms falling down. I fear you must have suffered greatly; let us hear as soon as possible; and with united compliments to Mrs. Burnett, believe me, yours truly,

G. PIGOT.

B. Burnett, Esq.

Besides these, the only acquaintance I had was Major O'Reilly, formerly of the 21st Dragoons, and then brigade-major at Graham's Town; a man universally beloved and respected. I have letters from him of the most solicitous tenor, even *after* my departure from the frontier; but as any sympathy they express might injure him in certain quarters, I shall not publish them; they may, however, be seen by any one interested in the question. I must not forget to mention that Major Pigot came to Bathurst, where we staid after finally quitting Graham's Town, awaiting the sailing of the *Locust*, and remained three days with us, *the commissioners being in the town at the time and aware of his visit.*

But if I had not the power of thus positively disproving the assertion of the commissioners, and this secession from any connection with me had actually occurred, the inference insinuated in the Report would be nevertheless unfounded, for the only matter of astonishment is, that so marked an object of the Government vengeance could maintain a friendly intercourse with any body! The colonial system is the scriptural one, not metaphorically applied, as in the decalogue,

but literally, for it visits the sins of its opponents upon the unoffending heads of all their friends and acquaintance; and for the last two years of my abode in the colony the *danger* of retaining my acquaintance became a standing joke amongst mine.

It was quite a common thing to say, "Burnett, we shall certainly get into the black-book if we are found speaking to you;" and one or two facts will soon illustrate this to the reader. When Mr. Geary, the new Graham's Town pastor, was taking leave of the Governor, on embarking for the frontier, his Excellency thought proper to caution him as to the acquaintance he might form in his district. Mr. Geary begged his Excellency to be explicit, when he wrote down the names of the foregoing correspondents, coupled with my own, as persons especially to be avoided, under the respectable denomination of *turbulent and disaffected radicals!* In my narrative to Earl Bathurst, I have stated this instruction to be conveyed in a letter, but the true version is the above, as given to me, subsequently, by Mr. Geary himself. Mr. Atherstone, who made himself so *consistently* conspicuous at the *lachrymal* dinner given to his Excellency, on his quitting the colony, was pointedly excluded from every invitation to public dinners, avowedly on account of his intimacy with me; nay, at his request, I remonstrated with his Excellency's aide-de-camp on the subject, and the most staunch and sincere friends I possessed at the Cape scrupulously avoided encountering me in the streets, although maintaining, at the time, the most cordial intercourse.

Par. 88.—"In the interval that took place between the pronunciation of the sentence of banishment and his departure from the colony, Mr. Burnett resided in Cape Town, and was

suspected of having been concerned in the composition and publication of an infamous libel, that had been seen by only two persons in a conspicuous part of the town, and that reflected grossly upon the honour of the Governor. A very creditable feeling was evinced by all classes of the inhabitants upon this occasion, and a great anxiety prevailed to discover the persons concerned in such an act of infamy. In consequence of information that he received from three persons, the fiscal applied to the Governor for permission to search the lodgings of Mr. Burnett, as well as of certain other suspected individuals, and upon this permission, authority was given by the president of the court of justice to a commissioner to proceed in execution of the warrant; these forms being always observed when any search of the houses of persons of the rank of burghers is considered necessary by the fiscal.'

Par. 89.---'The application for the warrant was founded upon the sworn and direct testimony of an Irish servant of William Edwards, who was confined in the jail, and under sentence of transportation to New South Wales, for addressing two libellous letters to the Governor, and it was found that Mr. Burnett had paid frequent visits to him, in company with others who had incurred the suspicions of the fiscal, and whose names were also included in the search-warrant. Nothing material transpired from the search of Mr. Bishop Burnett's lodgings, but in proceeding to the prison-room in which Edwards was confined, a paper was found, containing a copy, in the hand-writing of Burnett, of a placard that had been recently discovered and brought to the fiscal by the officers of the police, written on the same sheet of paper that had been used by Edwards as a cover for his letters to the Governor. Mr. Burnett acknowledged that the handwriting was his, but that he had been able from memory to furnish it for the amusement of Mr. William Edwards, after a very cursory perusal of another copy that he had accidentally seen. In consequence of further information received by the fiscal, he obtained permission to make a second search in the lodgings occupied by Burnett, when, amongst his papers, was found a composition reflecting severely upon the character of his Excel-

lency the Governor, the late landdrost of the Albany district, and upon that of a most respectable individual, now deceased, who had filled the situations of fiscal and president of the court of justice. No judicial notice was taken of these documents, but the fiscal having considered that Mr. Burnett was abusing the indulgence that had been shown to him, by being allowed to be at large after his appeal had been decided by the full court against that part of the sentence of the commissioners which required his confinement in a place of security until his banishment from the colony could be effected, gave orders to the officers of police to arrest him. Mr. Burnett succeeded for sometime in eluding their attempts to seize his person, and at last obtained a passage in a vessel that conveyed him from the colony.---We have, &c.

Signed { JOHN THOMAS BIGGE,
WILLIAM M. E. COLEBROOKE.

To the Right Honourable the Earl Bathurst, K. G., &c. &c. &c.

Detraction is not the less baneful in its influence, by circulating in whispers and inuendoes: the grossest falsehoods may be propagated indirectly, which their fabricators would tremble to avouch; and this mode of slandering possesses the singular advantage of paralyzing defence. To be talked *at* is always more irritating than to be talked *to;* accusation justifies reply, while the notice of insinuation is considered evidence of guilt. The report, therefore, of the commissioners is not the less invidious, because it calumniates me chiefly by implication; nor will my reply to it have less weight with the public, because I repel invective in explicit terms, and call a LIE, wherever I meet it, by its proper name.

In vindicating myself from this atrocious aspersion, I shall first lay before the public the history of this placard transaction as it occurred. On the first of June 1824, a gentleman, residing with me at Mr.

Lucas's boarding house, acquainted the party assembled at breakfast, that a paper had that morning been discovered attached to a post, attributing to his excellency and Doctor Barry, the commission of the worst of crimes; and that a great sensation was Excited, in consequence, throughout the town. Hated as his Excellency was, every one expressed his disgust at this infamous proceeding, and none with more sincere indignation than myself; because I instantly foresaw, in this very event, whether the flagitious act of his enemy, or the ruse of his friend, the germs of a reaction that would retard his removal from the colony. To this tenor I expressed myself, adding, that if I could discover the author, even if he proved my own brother, I would denounce him to the Government. In the evening, I believe, of the same day, I was summoned home to witness the search of my papers by the fiscal, *avowedly* for a copy of this placard. After a minute examination, the fiscal and the members of the court of justice, who accompanied him, exonerated me from the possession of any writing inimical to his Excellency, or any portion of his government. During its progress, I certainly gave vent to those feelings of indignation which every honorable mind would experience at so vile and beastly an imputation. I stated my firm belief, that the whole was an infamous plot, concocted by Oliver the Spy, under high sanction, to attach obloquy to individuals obnoxious to the Government; to get access to their private papers; and in the desperate condition of his Excellency's popularity, to excite a sympathy in his favour; and this will continue my unaltered opinion of the transaction to my dying day.

As a connection is sought to be established between me and the person suspected of having composed this placard, it will be necessary to show how far that attempt is justifiable. A Mr. Edwards, a notary-public at Cape Town, had made himself very popular by his successful conduct of a defence for libel. His fame had reached the frontier, and Mr. Biggar, so grossly attacked in the account of the Graham's Town riots, commissioned me to employ him on my arrival at Cape Town, in prosecuting the Editor of the Government Gazette for the libel. Within a few days of my reaching Cape Town, and before I saw him, Mr. Edwards was imprisoned for writing two *offensive* letters to his Excellency, and, from various surmises as to his character and identity, my friends strongly urged me to hold no manner of intercourse with him, lest my own cause might be prejudiced by an association with a man the judicious part of society considered turbulent and factious. This advice I determined to follow, but still, in discharge of my duty to Mr. Biggar, it was necessary to see him; I therefore, accompanied by Mr. Whiston, the merchant, called upon him in the trunk, and the execution of this mission led me to see him three times subsequently; neither of these interviews occupied *half an hour, and I never saw Mr. Edwards either before or since.* Now, even assuming that I was a being so lost and degraded as to be equal to this flagitious attack upon his Excellency, does it come within the verge of probability that I should have sought a coadjutor, where the very secrecy of murder was required; and have selected one in a man of suspicious character, and an entire stranger,

to me; or have lent myself to so diabolical a purpose if it originated in him?

The town was at that period in a state of great ferment; placards were nightly exhibited as the only method of acquainting the Government with the public sentiment in the then shackled state of the press, and it was natural for Mr. Edwards to inquire of me the news of the day, and for me to relate it. At one of these interviews he expressed a great desire to see a lampoon, which had just been published throughout the town, exciting a good deal of merriment, and this, at his request, I wrote out from memory on paper lying upon the table; and, upon this simple circumstance, backed by the fiscal's infamous subornation of Edward's servant, rests the whole fabric of this slanderous hell-begotten LIE.

I shall now show, in two letters to members of Parliament, the account of this celebrated placard plot, as given by a respectable merchant in Cape Town, and by Edwards himself; and although they both contain subjects foreign to the one in point, I shall give the whole to the public.

*(Duplicate—Original, per Brig ——.)*

SIR, Cape Town, 10th July 1824.

Having already in my letter of 12th April, which respected the case of Mr. Launcelot Cooke, acquainted you with the commencement of some important events in this colony, it appears to me to be requisite to continue my statement. The object demands investigation, not only for the satisfaction of the parties aggrieved, but also to prevent the recurrence of arbitrary measures, which render each man distrustful of his neighbour, and disturb the peace of our society.

Mr. William Edwards, notary public (the legal adviser of Mr. Cooke), is a man of great boldness, and possesses considerable talents in a peculiar way, but he runs his head into troubles, as if he sought them as matters of business, and lashes private character

without discrimination or pity, in order to serve his own designs. His character and intentions are unknown here. Some assert that he is Edward the spy, who gave information respecting the Cato-street plot; some say he is a political agent to the Commissioners of Inquiry; some say he is a papist, and maintains a correspondence with Colonel Bird (whose services as Colonial Secretary have lately been dispensed with); others say he is employed by the Ministers or the Opposition. There is doubtless something singular in his movements; at any rate, I am persuaded he is not the man to act from pure patriotism. Shortly after Mr. Cooke's departure, Mr. Edwards addressed the Governor upon various subjects, filling his letters with abuse, or rather, perhaps, with such strong and unpleasant truths as are considered equally reprehensible by men in power. His Lordship handed over these letters to the fiscal, who commenced a prosecution for libel against Mr. Edwards. This individual was anxious to be tried according to the mode of procedure in England, and defied the Court of Justice to prove, either that he was the author of the letters in question, or the publisher of the libel; "for suppose," said he aloud in a crowded court, in allusion to the Governor, "that any man were to call me a cock-fighter, a horse-jockey, a swindler, a black-leg who had been black-balled and horsewhipped at Newmarket, that man would not be guilty of publishing a libel upon me, but were I, myself, to tell all the world what imputations he had cast upon me, I alone should be guilty of publishing the libel. So, in the present case, his Excellency has published a libel which otherwise might never have been published, being contained in a private letter to himself." On hearing the list of his own witnesses read over in court, Mr. Edwards remarked, "I observe that the name of a principal witness is not inserted: I must, therefore, acquaint you with her name, which is Catherina, formerly slave of Mr. Van der Riet, and now the concubine of his Excellency Lord Charles Henry Somerset. His Excellency's own name is also omitted: I dare his Excellency to show his face in this court. I would prove how many prize-negroes he gave Mr. Van der Riet to purchase the freedom of this concubine: I would tell him of his villanies in the management of the Cape Corps, and the manner in which he broke Colonel Frazer's heart." This was a sort of language which had never before been heard in a Cape of Good Hope court of justice, yet the two sitting Commissioners of the court allowed him to proceed during the first day of his trial; but towards the conclusion of it they absolutely prohibited him

from using any language of a personal nature. Neither were witnessess called to prove the libel, or the publishing of it, according to the English mode, but he was condemned to seven years transportation to Botany Bay. This sentence of the sitting Commissioners was afterwards confirmed by the full court, which consists of the Chief Justice and eight members. Mr. Edwards remains in prison, where he is frequently visited by his Majesty's Commissioners of Inquiry, and conjecture is busy as to the cause.

One important circumstance followed another till the whole colony was in an uproar. A weekly newspaper, called "The South African Commercial Advertiser," was allowed to be published here, independently of the "Cape Town Gazette," which is filled with official and other advertisements. The new paper made its appearance in January last, and was edited by Mr. George Greig. This individual published a prospectus, of which I enclose a printed copy, wherein he professed he would "ever most rigidly exclude the remotest discussion of subjects relating to the policy or administration of the colonial Government." With this stipulation he certainly commenced, and afterwards as certainly broke it. He now maintains, however, that his profession was not binding upon him, as he made it in the idea that the Government would grant his application to establish a paper upon the terms proposed in the prospectus, but as that application was neither granted nor yet absolutely refused, he ventured to commence the work at a hazard, and consequently considered he had a right to alter its original plan as he pleased. But no paper of the kind having ever before existed here, he might have expected it would be suppressed should it chance to offend his Excellency. The "Advertiser" was published, and had an excellent sale: political discussion was for some time abstained from, and several useful, yet inoffensive subjects, were occasionally brought to view. The Editor appeared to have no intention to deviate from his prospectus until he ventured, in one of his later numbers (No. 14, 7th April) to entertain us with his sentiments respecting what sort of a Governor *ought* to preside here, and mentioned several requisite qualifications which, it was inferred, did not exist in his present Excellency. It soon, therefore, began to be feared that Mr. Greig might feel inclined to give some portion of publicity to the tremendous philippics which were utterred in court by Mr. Edwards. The fiscal was consequently ordered to assume the censorship over the paper, and also bind the editor by two securities for 10,000 rix-dollars, to abide by the terms of his prospectus. Here was sufficient punish-

ment for Mr. Greig's offence. But the publication of trials, an advantage which had not hitherto been allowed to the community, was also prohibited, and even extracts from generally esteemed authors were forbidden, unless approved of by the fiscal. Mr. Greig refused to submit to such terms, and threw up his publication. He, however, continued to follow his business as a printer, and advertised that Mr. Edward's trial would be published in London, as you will find narrated in an enclosed printed paper, (which I have marked No. 1,) entitled "Facts," and which, in all probability, brought down upon Mr. Greig the additional vengeance of the colonial Government. His press was soon after sealed up by order of his Excellency, and a warrant, whereof a copy marked No. 2, is sent herewith, was served upon him, ordering him to quit the colony within a month from that day, the 8th May. He accordingly began to dispose of his effects, and to make preparations to leave the colony, when he was surprised to receive a letter from the fiscal, as by printed copy No. 3, stating, that "being aware it had not been his Excellency's intention to enforce the warrant, unless some *fresh* cause should arise, he obtained his Excellency's permission for Mr. Greig to remain in the colony." Mr. Greig was thus ordered into banishment and his business ruined, not for an offence he had committed, but in case he should commit any fresh offence. A friend of mine, who holds an important situation connected with these matters, admitted, that no man ought ever to be sent out of the colony unless in a case of absolute necessity. Here then, replied I, we see a man banished on account of absolute necessity, and called back again to prove that no absolute necessity ever existed.

It is my wish to inform you, Sir, that the printed papers sent herewith, called "Postscripts," and marked No. 2 and 3, appear to have been secretly printed, and given by Mr. Greig to some of his acquaintances, after the warrant had been issued to suppress his printing, and order him out of the colony, and after all his known materials were sealed up.

The principle of sending persons out of the colony without a trial, was viewed with alarm by most people; but the spirit of colonists is seldom properly exerted and maintained. Some of the members of the Commercial Exchange made a stir, apprehending both their liberty and property to be endangered, and seven of us sent in a requisition to our Committee of Five, for a general meeting of the members upon this important subject, but the request was not complied with. I beg leave to enclose a copy of the re-

solutions which, in case of the compliance of the committee, were intended to have been moved at a general meeting. You will see that a few of the merchants were in earnest—large subscriptions were ready to have seconded this first effort, had it succeeded. As that failed, a less effectual measure was adopted—a memorial was prepared, addressed to the King, on behalf of a free press. It is a well expressed document, and is signed by most of the respectable English residents, unless persons in office.

About the same period that Mr. Greig's paper commenced, a quarterly magazine, called "The South African Journal," made its appearance. It was edited by Mr. Thomas Pringle, a worthy and respected gentleman, and was even printed at the Government press. He was led to make some reasonable but rather independent remarks in his magazine, and the fiscal was therefore appointed censor over it likewise, and the editor was sent for by his Excellency. Mr. Pringle's appearance ought to excite compassion, for he is a cripple, and unable to support himself without crutches, and his own mild manners ought to excite forbearance in others. But he was the only man in office who ventured to sign the memorial in favour of a free press, and the Governor charged him with this offence. Mr. Pringle replied he had been accustomed all his life to think for himself, and was not aware that because he held a Government appointment, he was, at so late a period to be deprived of that rational gratification. Immediately after this conversation he resigned his appointment of Librarian to the Public Library, and at the same time threw up the publication of his journal.

These lamentable events were soon followed by others: there was no end to the mischief.

One morning very early Captain John Findlay, now a Cape merchant, unfortunately arose out of bed, and went towards the Parade to look for balls on the Lion's Rump. On a post which stands on one of the bridges, leading from the Heeregracht to the Parade, he is said to have said he saw a placard, charging Lord Charles Somerset and Dr. Barry with committing an unnatural crime together. He is further said to have read it aloud, and a person named Deane, who is secretary to Dr. Barry in his capacity of medical inspector, is said to have heard the words read, while dressing at his own window. Findlay did not pull the placard down at once, but, as the story goes, first returned to his house to pull his boots on: he was then in his morning gown and slippers. When he returned booted, the placard was gone, and he is said to

have seen a man on a white horse ride off with it. No other person is known to have read it but Findlay, and no person to have heard it read but Deane, save, perhaps, the unknown man upon the white horse. Findlay made known the circumstance to the fiscal, who, it is said, swore him to secrecy: so that Mr. John Findlay feared nothing from the cross questions of unbelievers. Government offered a reward of five thousand rix-dollars for the discovery of the person who stuck up the placard, and one thousand rix-dollars more to any one who should produce the paper itself; and Dr. Barry offered one thousand rix-dollars in addition. A document also was drawn up by private persons, stating the horrible affair to have been horrible, but giving no other particulars; and individual subscriptions of all parties were affixed to this document, amounting to the enormous sum of upwards of fifteen thousand rix-dollars! The Commissioners of Inquiry were among the subscribers. Twenty-one thousand rix-dollars!—a Cape fortune! set many a rogue busy to discover the bill-sticker, but two worthies only proved very conspicuous as informers on this occasion; namely, William Jones, Esquire, Inspector of Public Buildings, alias Oliver the Spy; and his coadjutor, a *man* named *Shee*, a tailor, who lately, in a drunken quarrel, had his nose bit off, literally bit off, by another *man*. But no trace could be discovered of the placard sticker, nor even of the bit of paper on which the calumny is said to have been written. People begin to suspect "there is something rotten in the state of Denmark." To make it appear the more evident that a certain personage had been slandered and unjustly accused, both in Court and out of Court, it is thought to have been a fair stroke of *jockeyship* to stick up such a placard.

The numerous subscriptions which, in the universal burst of loyalty, were tendered, appear to have served as an apology to Government for many arbitrary acts which followed. Search-warrants were granted (not immediately after the placard was stuck up, but immediately after the rewards were offered, and the subscriptions made), by virtue of which the houses of several individuals were entered by the fiscal and two members of the Court of Justice, who examined and ransacked their papers, on pretence of searching for the placard. Mr. Greig's papers, and those of Mr. Bishop Burnett, a gentleman of good family in England, who is at issue with this Government, were searched; so were those of Mr. Edwards, who was in the tronk, or prison, in a comparatively comfortable room, but was afterwards placed in solitary confinement: the papers of a Mr. Broomfield were examined, and

those of Mr. Wilmot also, who was clapped into prison on suspicion, and set free again at the end of a few days, without any charge being brought against him. Warrants were said to have been granted for the committal of several other individuals, among whom was Mr. Pringle. Having heard of the warrant against him, he waited on the fiscal, who gave him no satisfaction, but demanded the name of his informant, which Mr. Pringle, like an honest man, refused to tell. He was therefore sent for by Mr. Bentinck, the then sitting Commissioner in the Court of Justice, who asked him whether he was aware that a colonial law existed which authorised his being committed to prison, in case he should persist in refusing to give up the name of his friend. At this time Mr. Pringle's friend is understood to have been in Court, and to have authorised his name to be mentioned—but nothing further has transpired.

Messrs. Jones and Shee are known to have been instrumental in these proceedings, and Mr. Jones, no doubt, felicitates himself upon the happy resemblance between these and the suspension of the habeas corpus act. He offered at the Concordia Gardens to lay a bet of a guinea to a shilling, that the author of the placard would be discovered within twenty-four hours. If ever such a thing existed, it seems highly probable that this friend to his country acted the part of bill-sticker.

The farce was not yet ended. Addresses over-flowing with loyalty were poured in upon his Excellency by the different public bodies, and the Court of Justice solicited the mercantile committee to join in their expressions of condolence. But the merchants had become dissatisfied with the arbitrary measures of the Government, and some of them wished to strike out their names from the subscription list, and the committee having, on a former occasion, refused to call a meeting at the request of seven of their own body, could not, in common decency, now accede to the request of the Court of Justice. They therefore replied, that the merchants had been the first to come forward with their subscriptions, and to manifest their detestation of the foul calumny against his Excellency; but that, to take any further notice of it, as proposed by the Court of Justice, was only to perpetuate the remembrance of a subject which ought to be consigned to oblivion.

Thus, Sir, this supposed placard stirred up every fool who thought that sedition already was, or might afterwards be, stamped upon his character, to add his name to the subscription list, in hopes that he might be considered a friend to good government.

But when the good Government issued their search-warrants, the fools pricked up their long ears in utter amazement! Even the most wise, his Majesty's Commissioners of Inquiry, are said at length to have thrown in some doubts as to the legality of the measures adopted by Government, in searching, imprisoning, and terrifying the community, about a damnable paper, which no one could recognise if he saw it, except one blubberheaded fellow, who can scarcely read.

I beg leave to add, that you are at perfect liberty to make any use you may think proper of this letter, without mentioning my name. On second thoughts, I shall send by Mr. Greig a complete set of his own papers together with the enclosures mentioned in this letter.

I hope that Mr. Cooke's case has succeeded at home, and I have the honour to be, Sir, your very obedient Servant.

* * * *  * * * * * *

To Joseph Hume, Esq. M.P.

Sir, Cape Town, June 28, 1821.

Having made some communication to the Court of Inquiry, tending to show I was convicted without proof, or any other than hypothetical admission, the Commissioners sent the accompanying note on the 28th, and on the 22d spent some hours in my conversation, when they inquired why I got another person to imitate my writing to the letter, and I replied that it was for the purpose of seeing by what manœuvre the fiscal would prove I did it, and enabling me to deny it without falsehood in my plea.

Mr. Bigge said, he was investigating the circumstance, but that when I went to New South Wales, he "should be obliged to write to his friend, Major Goulburn, to explain my conduct in the colony, and no doubt the Governor would write to Sir T. Brisbane." I replied, that in that case I had better be hanged, but I should write to explain the matter to you, to whom I had already sent all the proceedings. He seemed a good deal confused at this, and wished to undo the effect of his threat, (as I had promised to tell you of it,) saying, you were now grown cautious, having been often deceived; I had therefore better trust myself to Lord Bathurst, as I had done Lord Charles injury enough without exposing the affair in Parliament. I replied, I had no further wish to injure any man; his Lordship insulted me,—I retaliated,—we were even, and I was satisfied, if I was no more annoyed. I was therefore will-

ing to send a petition to Lord Bathurst, trying that first: wherefore I wrote one, (of which I send you a copy,) and Mr. Bigge forwards it, as also the other concerning the bank-notes, of which I send you a copy, with the correspondence. I told Mr. Bigge I had been many years out of England, but as I had some friends near Shrewsbury, when I returned I hoped to find them, and satisfy you I would not be likely to deceive you. I send you also the copy of two letters, which were written by a gentleman in this colony for the press, but refused admission in the Government paper; the copy of another letter written by me to Mr. Gregory, the secretary to the Commissioners of Inquiry, with my petition to the King; the copy of the sentence of Lord Charles, denying me permission to appeal to the Court of which he is judge, thereby remitting the sentence of the Court for execution. I understand that the person who copied my report of the trial, in speaking of the missionary expelled the colony, has called him Smith, whereas I said "Mackennie," but they were both so served.

Perhaps, you will not deem it impertinent in me to request you to inquire what steps the Secretary of State means to take before you adopt any measures in the case, for although I have not promised ever to move in the matter if Lord Bathurst recals me to Europe, yet I would then wish nothing to be done until I can have the honour of personally explaining to you every subject connected with this affair, and with the affairs of this Government. I have a strong suspicion that the Commissioners of Inquiry mean to blink the question a good deal. Major Colebrooke is a complete partisan of the Governor, and as Lord Charles has been more cautious than Macquarrie not to give them personal offence, they seem disposed to save him. Mr. Bigge blamed me in strong terms for so insulting him on such a trifling provocation; said I had injured his character, made him unhappy in his family, brought his amours to the knowledge of Lady Charles, in fact, that I had stung him to the very heart, a wound which never could be healed. I said, "Who began first? why did he prosecute me about Mr. Blair? why tell me a lie in his letter of the 4th February? why allow a ——— like Wilberforce Bird to insult my character, and why so closely lock me in a cell before trial? I then asked Mr. Bigge, if he thought he would have come out of a cell in a better humour after eight days confinement?" and I concluded, "Pray Sir, can you, or Lord Charles contradict any one assertion I made?" He said, the Governor declared he had not bought that black woman's freedom with prize-negroes. I answered, he *promised* to pay 4000 rix-dollars; he

*paid* 1000, and gave Mr. Van der Riet some prize-negroes, who understood his meaning, so never asked for the money. That is a matter of account, said Mr. Bigge. Yes, I said, in law it is,—but if you allow such a flimsy fabric to cover so palpable a dereliction of duty, you may as well go home again. He then said, there was a dark allusion in the first paragraph of my letter to a circumstance respecting his daughter, and wished to know whether I had spoken of that in Court. I replied, "No, the daughter was a woman and defenceless, and although I would let his Excellency know I was aware of her failings, I would not openly attack the frailties of those whom I loved next to the divinity." He rubbed his hands with apparent satisfaction, expressing great delight. I mention these circumstances, because this day's interview showed me more of the Commissioners than volumes could have done.

Since I so completely exposed Lord Charles in Court, there never was so great an alteration in a man. He is humbled to the very dust. He begged the Judges of the Court of Justice to send him a complimentary address; they dare not disobey. So it was got up and signed by the Judge's Secretary, Clerks, Advocates, Attorneys, and Messengers, to make a long list. Not one man signed it whose situation was independent of his nod; for he assumes the right to appoint and remove these gentlemen at his pleasure. The Notaries next were required; and being in the same case, did the like. The members of the Commercial Hall were then required; but they are quite independent of him, and in answer to the application, wrote my Lord a letter, saying, "they thought that the less was said the better." He was taken sick soon after, and has been ever since in bed.

In England you have plots, spies, and green bags. We are as clever at the Cape. On the first of this month, a story got abroad of a placard being posted up, charging the Governor and Dr. Barry with ————. The whole colony were in arms against the monster of a libeller. His Excellency offered a reward of 5000 rix-dollars from the colonial funds for the detection of the criminal, and 1000 rix-dollars for the placard. Dr. Barry offered, from his own purse, 1000 and 100 rix-dollars. The merchants and inhabitants subscribed nearly 20,000 rix-dollars. Hundreds were suspected of it. I considered the matter, and suspected they had done it themselves to suit those who were discontented with the administration of the colony, and to raise a sympathy in behalf of the Governor. I wrote and told them so. In a few days, an Irishman, whom I had hired

for a groom about three months ago, came forward, under the auspices of Oliver, the famous spy, who is Inspector of Government works here, in the name of Jones, and prime minister to the Lord Charles. He charged me and three most honourable gentlemen with doing it; but being such a stupid blockhead, he could not stick in the same story twice together; therefore, when they found all the drilling they could give him would not qualify him to undergo my cross-examination, they abandoned the prosecution without bringing any of the parties to a public hearing. The fellow, disappointed, now says that the fiscal promised him 500*l.* and a place under Government. Three persons to whom he said this, told me of it. Another of my servants told me, whilst I was in prison, he had been stealing and selling my clothes; the person was found who had bought them. I sent all the evidence to the fiscal; I complained to the Judges of the offer made him for his perjury; and as yet the fiscal dares not prosecute the man he has suborned. Under pretence of searching for this libel, they have searched the houses and papers of numerous persons, and no sign of such a thing found. Mine had the same fate; nothing being found, and the vast reward producing no information, inquiry began, who saw this famous placard. The Commissioners likewise took up the cudgels of inquiry. Mr. Bigge told me, that he found that Captain Findlay had seen it, soon after day-light, on a post; described it, and said a man rode past on horseback whilst he was reading it. This was corroborated by Dr. Barry's clerk, who said that he saw Findlay reading it at day-light—the man go by on the horse—described the man;—and that he heard another person reading it from his bed-room window; but as it was very cold, he immediately shut it, and went again to bed. I told the Commissioners, that what convinced them of its existence, satisfied me it was all a hum. I said, I knew Captain Findlay's character better than they did. I would believe nothing he said. I admitted that he might have been looking at the post whilst some man rode by; and that Dr. Barry's clerk might have seen this; but that Dr. Barry and his clerk were the two persons whose word would be least credited in the Cape. I convinced the Commissioners, that I had convicted Dr. Barry of a lie in the presence of the two fiscals. I showed that it was impossible for his clerk to hear a man read from his bed-room window to the place he described; and I asked if it was probable that, hearing such a thing against his master, he would leave it. Then the Commissioners went to the place, and Mr. Bigge said it was impossible for a man to hear. He asked Dr. Barry's

clerk why he did not go and tear down the placard; the fellow replied, it was a cold morning, so he went to bed again. It turned out that the man who rode by was the Commissioners' coachman. He had no motive for lying; so he said, he saw Captain Findlay looking at the post, but neither saw nor heard any thing of a placard. Mr. Bigge and Mr. Gregory are, I believe, perfectly satisfied. Nothing can convince Major Colebrooke until he sees the mountain delivered, and the mouse alive. The littleness of this trick, and the wickedness of the subornation, make the Governor look here more contemptible than ever.

I should apologize for this long letter, but I know you would be offended at any excuse for a trouble that may serve the interests of your country. I have the honour to be, Sir, your very obedient devoted, humble Servant,

W. EDWARDS.

To the Honourable ———, M. P.

The following letter was also sent to the Cape Gazette by a highly respected civil servant of the East India Company, then residing at the Cape for the benefit of his health, but refused insertion:

*(To the Editor of the Cape Town Gazette.)*

SIR, Cape Town, June 28, 1814.

As a person nowise interested in the politics and the factions of the Cape of Good Hope, I read with infinite satisfaction the paragraph in your paper of Saturday last, containing a list of the various persons who had declared to his Excellency the Governor their abhorrence of the monstrous libel said to be lately sent forth against his character; and I was a good deal surprised and hurt, that the loyal English of the colony had not, with one voice, joined in an expression of the same feeling. I therefore solicited several of my acquaintance to unite with me in a similar address to his Excellency, when I heard, with considerable regret, that so far from joining in this praiseworthy effusion of loyalty, the members of the Commercial Hall had positively declared their determination not to do so; some alleging, that they doubted the existence of such a placard, and others, that they thought it was not published by any of the Governor's enemies.

This latter appeared to me a solecism, and required explanation, which was given to me in these words: "There are many persons in the Cape of Good Hope discontented with the present administra-

tion; one has lately attacked it in a very unjustifiable manner in open court, another in a newspaper, some in common conversation, and many in writings addressed to the Metropolitan Government; and there is little doubt that these placards have been written by some branch of that administration, in hopes to make it appear that every other story which has been told was as untrue as the improbable tale thus vamped into life." In order to ascertain the probability of this story, I contrived to get a knowledge of all the evidence which had been adduced; and I must confess, that the appearances of tampering with Shee and Oliver the spy, with Mr. Edwards's servant, and the many plain proofs of subornation and perjury, in a great measure justify these suspicions.

However, Sir, for the purpose of learning the opinion of Mr. Edwards, I contrived to procure an introduction to that gentleman, and was a good deal surprised at the boldness with which he asserted that no such placard was ever written; assertion without evidence is to me as nothing, and I was not inclined to believe Mr. Edwards's declaration unsupported by other testimony. I imagine he saw my feelings from my look of incredulousness, because he proceeded in these words, which struck me with considerable force: "When I first heard of this placard, I suspected my informant was its author; nor were my suspicions entirely removed, until I had a conversation with the Commissioners of Inquiry a few days ago; and if you consider that no other person ever saw the placard than Captain Findlay, you will be as much inclined to doubt it as I am."

[Here follows a string of heavy accusations against Captain Findlay, which I decline publishing.—B. B.]

He then added: "When I learnt from Mr. Commissioner Bigge, that Captain Findlay's evidence was corroborated by that of Mr. Deane, who said he saw Findlay looking at the placard, and afterwards heard another man reading it from his bed-room window, whilst a person went past on horseback (who turns out to be the Commissioners' coachman), and says he rode by, and saw Captain Findlay, but heard no placard read, I reflected on the matter; and I doubt not that this man did ride by, nor that Captain Findlay was looking at the post, nor that Mr. Deane saw it, because we all know that there is a post; but it is extremely odd that neither Captain Findlay nor Mr. Deane can tell who tore down the placard; and although so large a sum of money is offered for the paper, it should not be found, nor its author, nor any thing about it, nor any other person who saw it. As to Mr. Deane (knowing his zeal for his

employer), will any man believe, that after hearing such a thing of two persons to whom he is under so many obligations, he would return quietly to his bed, leaving such a detestable calumny exposed to public view. Those who will believe he possesses such a callous heart and such black ingratitude, will think any tale he may tell unworthy of the least credit. It is, therefore, improbable he should leave it if he knew of it, and it is impossible he could hear a man reading it from the place where he says he stood. For these reasons," said Mr. Edwards, "I have not the least doubt that Captain Findlay (ignorant of the consequences), after having read the bills of the sales pasted on the posts, indulged his fondness for scandal by the fabrication and propagation of this tale. It was a short one, and when he came to be officially interrogated, he thought it prudent to confine himself to a few words, because a man has not much difficulty in repeating the history of a short lie. Not so with my servant, Daniel Lee: he had a long string of lies to tell, and not having ingenuity enough to stick to his text, they dare not trust him to my cross-examination; for I have no doubt, were I allowed to interrogate them, Deane and Findlay, I would satisfy the world that thereis not one word of truth in the whole story."

I must confess, from this reasoning, I became a proselyte to Mr. Edwards's opinion; but as he possibly may be wrong, I should be glad, through the medium of any of your correspondents, to be set to rights. If he is right, the public will easily feel the force of his argument; and I think it is due to the character of his Excellency the Governor, that the opinion of so singular a man on so strange a subject should be made known. I am, Sir, &c.

MANLIUS.

Having shown this general state of opinion as to whether the placard ever existed or not, I think it necessary to add my own, in justification of Captain Findlay. I have heard that he set Lord Charles Somerset's authority at defiance, when his Excellency wanted to dictate the price of freight for some horses it was his intention to import: this does not look like subserviency; and *I know* that Lieutenant-Colonel Somerset is under *very heavy* obligations to him.

I have always heard him described as a quiet inoffensive man, and I cannot conceive it possible that without apparent motive, he should have perpetrated an act of such damnable atrocity: it is, therefore, my decided opinion that the placard *was exhibited by Oliver the Spy* for the purpose of producing a reaction, and that when he, or some one employed by him, saw it had been read, it was dexterously removed from the post.

Let us now turn to the evidence of Mr. Edward's servant, Daniel Lee, on which the whole of this infamous fabrication against me rests.

*Daniel Lee's Evidence.*

Wednesday, 9th June 1824.

Your name, age, and birth-place?—*Daniel Lee*, upwards of twenty years of age, born in Ireland.

Are you not a servant to William Edwards, now a prisoner?—Yes, I have been his servant for about three months.

Are you satisfied with the behaviour of your master towards you?—Yes, I was quite satisfied.

Has there never been any dispute or dissatisfaction between you and your master William Edwards?—No, never.

Do you know anything of an anonymous writing, in which his Excellency Lord Charles Somerset and Dr. Barry were defamed?—Yes, I do.

When did you first hear of it?—The first time I heard of it was when Mr. Edwards was condemned a second time for transportation.

How did you become acquainted with it?—I came here to the tronk one night about eight o'clock, with tea for my master, when I found him writing with Mr. Burnett.

Did you know then what they were writing?—I knew it was some verses about Government, but I did not know that night what it was.

When did you become acquainted with it afterwards?—The next morning I came down about nine o'clock with breakfast to my master; while I was putting the tea-things on the table my master gave me a note, and desired me to take it to Mr. Burnett at Mrs. Lucas's, which I did; when I came to Mrs. Lucas's, a man opened the door, to whom I gave the note. Mr. Burnett then came out of one of the rooms below and went up stairs, while I waited at the door for an answer. Mr. Burnett shortly after came down with a large bundle of papers wrapped up in another paper, but not sealed, desiring me to take particular care, and not to let any of them drop, but to deliver them safely to Mr. Edwards, which I accordingly did. Mr. Edwards then opened the papers, and the first which he took out was the placard concerning Lord Charles and Dr. Barry's wife, which, when he read it, he laughed so loudly as to make me take particular notice of what he read.

What did you hear Mr. Edwards read?—It was about that the Governor used to be coming the back way of little Dr. Barry's wife.

What did Mr. Edwards do with that paper after he received it?—I went home with the breakfast things, and when I come back I found Mr. Greig with Mr. Edwards, and they were both employed in reading the paper. Mr. Edwards then spoke to Mr. Greig about putting it up, but Mr. Greig said it was better he should wait till his third sentence was passed, which Mr. Edwards then said was very good.

Did you not see any other papers on that occasion in the parcel? I saw a paper with a picture on it of an ugly thick man, with a long nose; on the top was written *the wonderful Cape Punch*, and below there was some verses, which I did not read: there was also another picture, which was not finished, in the table drawer, which was the same picture, but not so well drawn out. I saw also another paper in the parcel about *Punch*, which looked like printed.

Is this the paper you saw? [exhibiting to the witness a pasquinade beginning with the words—*Wonderful Cape Punch.*]—The one paper which had the picture was written like the paper now shown to me, [printed letters,] the other paper contained writing in a usual manner; but besides there were many other papers which were sent out to different gentlemen in the town whom I do not know, and some of those gentlemen came to the tronk, and took some of the papers away with them.

Did you also see such a paper as this in the parcel? [exhibiting to the witness another pasquinade beginning with the words—*His Majesty's Fiscal.*] —This paper I think I brought from Mr. Greig's clerk, whom I supposed had copied it in printed letters for Mr. Edwards, because when I once took a note from Mr. Edwards to Mr. Greig, the clerk opened it, and gave me for answer, "The paper which Mr. Edwards has sent to be copied is not yet done."

What is the name of Mr. Greig's clerk?—Mr. Joseph Green.

In your answer to the 11th interrogatory, you mention a conversation between Mr. Edwards and Mr. Greig; what more did you hear on that occasion than what you have already stated?—Mr. Greig then went away and I remained in the room doing one thing or another, which I do not now recollect; during which Mr. Burnett came in and read the paper; Mr. Edwards then told him what Mr. Greig had said about putting the paper up for the passengers, which Mr. Burnett said was very right, but that it would be a good thing to send a copy of it to Lady Charles in a letter.

Did you observe on that occasion that William Edwards and Bishop Burnett were on a confidential footing?—Yes, as long as I have known Mr. Burnett, which is not very long, Mr. Edwards and Mr. Burnett always were talking together as two brothers.

Were you permitted on those occasions to be always present during the conversation between said persons?—Generally in the evening after the papers had been read by Mr. Edwards and his friend I was present, but sometimes in the day-time; when he used to have very private conversations with any of his friends, he used to tell me that I might leave the room.

As you say you had the liberty to hear all those papers read, was any thing said to you about keeping them secret?—Mr. Burnett and Mr. Edwards told me never to speak of any thing that I saw or heard there, and I said, "No, that it is no business of a servant to speak out of doors, but to mind his own work"

Did not William Edwards say any thing to you about seeking another place in case he might leave this?—No, but I spoke to him about it myself, and he told me I need not be afraid, for that he would take me to New South Wales; that Mr. Ingram owed him (Edwards) a large sum of money, which would more than clear my passage, and that nobody else could prevent my going with him.

Was the offensive writing respecting Lord Charles and Dr. Barry copied by William Edwards, or did he do any thing else with it?—Mr. Edwards copied it; I saw him copy it, and different other gentlemen who came to see him in the evening copied it; but some of them took it away in the evening, and brought it back again in the next morning.

Do you know any of those persons?—No, excepting that I have often seen Mr. Witham there, who wears spectacles, and Mr. Whiston, the merchant; Mr. Twaites also, the brewer, used to see every paper that Mr. Edwards had; Mr. Witham always in the day-time, but several others whom I do not know used to come at night.

Do you know Captain Findlay?—Yes, I know him very well, for I used to go to him with messages, but I never saw him in the tronk at Mr. Edwards's.

Do you know who wrote the paper against Lord Charles and Dr. Barry, which you saw in the parcel that you received from Bishop Burnett?—I do not know who wrote it, but the night that Mr. Burnett and Mr. Edwards were reading a paper together, they laughed very much; and the morning that I brought the bundle of papers from Mr. Burnett to Mr. Edwards, he laughed in the same manner, when he saw the paper I speak of, so that I think the paper that they were writing the evening before was the same paper that I brought the next morning to Mr. Edwards from Mr. Burnett; namely, the paper about the Governor and little Dr. Barry's wife.

Do you recollect that there was any correspondence on the 31st May last, between William Edwards and others, respecting that writing?—There was on the 31st of last month. I heard Mr. Edwards read the paper about the Governor and little Dr. Barry's wife; he then sealed it up, and told me to bring it, together with a note, to Mr. Greig, which note he said was for some copies of papers. I did so, and when Mr. Greig opened the paper and the note, he read it to some persons who were there, and they all laughed: he then rolled it up in a peice of brown paper, and sealed it, and gave it to me with the copies of the papers I had been sent for. He asked me if I knew what was in the paper, and I told him it was no business of mine. When I was coming down stairs, Joseph Green met me and gave me another paper for Mr. Edwards, which was something about John Bull; it began with "His Majesty's fiscal," for I heard Mr. Edwards read it after I delivered it to him.

Did Mr. Greig return you the paper about Lord Charles Somerset and Dr. Barry's wife, without making any alteration in it?—Yes; he made no alteration in the least in it.

Was that paper in printed letters, or written in a running hand?—It was printed letters, but they were larger than the paper beginning with "His Majesty's fiscal."

Do you know what became of that paper after you brought it back to William Edwards?—I brought the paper to Mr. Edwards about two o'clock. About four o'clock Mr. Greig came, and I heard them speaking about putting it up.

Mr. Greig then went away, but he came back at about eight o'clock, when they again spoke of putting it up, and both of them asked me to do it; I did not refuse, but it surprised me, as they never asked me to put up any paper before; but Mr Greig then said I was too low to put it up, as it might be taken down; on which they sent me to Castle-street for a man who lives there, whose name I do not know, although I heard it, but whom I know very well by sight, and also the house in which he lives. I found him there, and he came down to the tronk with me. Mr. Greig, Mr. Edwards, and he, had some conversation, which I did not hear, but I heard them tell him to put it up on the bridge in the passage leading to the large house, on the parade belonging to the merchants: he asked them what time he should put it up, and they said it did not signify, provided he put it up any time before gun-fire in the morning. The man then went away with the paper, and as I had nothing more to do, I went home.

Can you describe the tall man who, you say, was to have put up the paper?—Yes; he lives in the house of Mr. Robertson, the upholsterer, and I believe is a relation or some friend of his, for I always seen him carrying Robertson's children. He is a tall man, and generally wears a jacket and white trowsers, with an oiled-skin hat; and that is all I know about it.

Did you hear anything the following day of that paper having been put up and torn down again?—The next morning I heard that it had been put up; it was the common talk of the town; and I afterwards saw the proclamation on the Town-house offering a reward.

After the tall man was told to put up the paper, did you receive any orders from Mr. Edwards?—No, not that time; but Mr. Edwards often told me before never to go near any paper that he caused to be put up, because by so doing I might criminate myself.

Do you know anything of this paper? exhibiting to the witness a written paper beginning with the words, *Offenders and blacklegs.*]—The day after the placard was taken down I saw several people copying it from a card which was stuck up opposite Mr. Hoffman's house, and I copied it from another copy that was copied by one of the men who was standing there. I brought my copy to Mr. Edwards, who scolded me very much for having done so, saying that if such a thing was found on me I should be put into the tronk, and that I could not get out so easily as the people who put these things up.

What became of the copy that you gave William Edwards?—I never saw the copy again which I gave to Mr. Edwards.

Were you not in company with R. O'Grady the evening before you were taken into custody, and what conversation had you on that occasion?—The day before I was apprehended I met R. O'Grady in the forenoon, and he asked me to come and take a bottle of wine with him in the evening and talk about our sweethearts. I told him that I had no objection, and that I would if I could. About the dusk of the evening I met him on the Heere Greght, where he had watched me till I came down from Mr. Edwards's, after dinner. He then took me to a house near Barrack-street, of the sign of the sun, where he called for a bottle of old wine; whether we had a second bottle I don't know, I was very tipsy, and he was just as bad. We had a good deal of conversation about our sweethearts, and then he asked me if I knew anything about the placard, for if I did know I might be comfortable for life. I said, "I know about the offenders and blacklegs;" and I then told him all about it, for I know it all by heart; and while I was telling him we both went to the next

box to see if anybody was listening; and that was all that I recollect that passed between us.

Did O'Grady bring you to any place where it was posted up?—Perhaps he might, but I don't recollect.

Before I say a word as to the utter improbability of this fellow's tale, and the *absolute infamy* which attaches to the fiscal for founding an imputation so seriously affecting individuals upon such flimsy materials, I shall point out, numerically, such answers to the interrogatories put to him, to the utter falsehood of which *I am prepared to make oath;* and I will add that, if the fiscal had committed no other actions, rendering him a pest to society at the Cape, and a disgrace to its administration, this alone should brand him for the remainder of his days with ineffable infamy and disgrace.

Question 7.—Every assertion here is false. At eight o'clock in the depth of winter, it must have been dark several hours, while the whole of the interview I had with Mr. Edwards occurred during broad daylight in the forenoon. Mr. and Mrs. Lucas, their family and boarders, can prove that I never dined out but once before that period, nor for weeks subsequently; that we sat down to dinner at six, and never left the dining-room before nine, and that, on the particular day in question, *I never once quitted the house!* This man never brought tea to his master while I was present, nor ever did I write anything in the tronk, but the copy before adverted to, during which time *no person was present but Mr. Edwards.*

Question 9.—The whole of this answer is one monstrous falsehood. I never received but one note from Mr. Edwards, and the tenor of it has entirely escaped my recollection. It was brought to me by

Miss Lucas, *and no answer required or given. I never saw the bearer, or quitted my seat upon the receipt of it, nor ever did I send back papers or aught else in return.* What is meant by Doctor Barry's wife is best known to the conspirators, as he is, ever has been, and, if *rumour* speaks truth, ever will keep single.

Question 16.—Mr. Edwards never related to me one word of observation made by Mr. Greig.* No mention of putting up a paper ever took place in my presence, nor ever was the name of Lady Charles, or the proposition of sending her a letter, uttered by either Mr. Edwards or myself; and to crown this atrocious lie, the precious miscreant *never entered the room but once during the whole of my calls upon Mr. Edwards,* when he merely delivered a letter to his master, and quitted the room instantly, without even hearing the sound of my voice.

Questions 17, 18, 19.—The refutation of these bare-faced falsehoods is comprised in the others; and I can solemely declare that the entire conversations I ever held with Mr. Edwards may be transcribed in half a dozen pages of this book.

Question 24.—How to refute assertions that are destitute of the slightest foundation in truth, I know not. If these hell-engendered fabrications rested upon anything tangible, one might, by tracing them through their involutions, furnish a convincing disproof; but they are so entirely inventions, that I can but re-assert the villain lies throughout the chapter. It would be perfect folly for me to say, I

* As I disclaim acquaintance with Mr. Edwards, so do I with Mr. Greig the printer: I saw him cursorily but twice before this affair of the placard. I wonder the commissioners did not tax me with the honour of his intimacy also.

was neither reading nor laughing with Mr. Edwards on a stated occasion, after saying I was *not with him* on such occasion; or to advert to what this fellow *thinks* as to this or that paper, when I neither *saw, sent, received, nor read any!*

So far for my bare assertion: and now let us see by whom it is opposed. The fiscal admits in his letter to the Commissioners of Inquiry, that all his unwarrantable proceedings in this affair rest *exclusively* upon the evidence of this servant of Mr. Edwards; for he says, "Nor have I been able to come to the knowledge of any more details respecting the author, writer, or publisher of the placard, than what are stated in the evidence of Daniel Lee." This admission, thank heaven, is on record; and fortunately it is not susceptible of any modification, or, no doubt, in the *next* Report of the commissioners, the wily, old fiscal, on discovering the error he has committed, would fritter away its purport in a very elaborate commentary. It remains, then, only to balance between the assertions of this Daniel Lee and those of the persons whom he has so daringly implicated, to come to a true development of this foul transaction. This man was an illiterate Irish peasant, of the very lowest description, brought by Mr. Ingram to the colony, and hired by Mr. Edwards as a servant. The Irish with whom he emigrated, held him in perfect detestation, from the general infamy of his character; and shortly after his subornation by the fiscal, he was waylaid by some of his party, and would, but for timely interposition, have been murdered on the spot; so great was the indignation his perjuries had excited. I must entreat of the reader to follow me closely. This man's master is in prison, for having literally

gibbetted Lord Charles Somerset in a court of justice. Mr. Greig, the printer, is under orders to quit the colony for opposing the noble Lord's policy, in *exposing* the *errors* of his administration; and I am under sentence of banishment for a similar *offence*. A few independent gentlemen visit Mr. Edwards in the tronk. Popular feeling is in our favour; and his Lordship in proportionably bad odour. A placard, containing a foul libel upon his Excellency, very opportunely appears; much sympathy is excited for him; and 20,000 rix-dollars are offered as a reward for the detection of the calumniator. The colonists are at this period groaning under the effects of his injustice and malversation, and it is rather feasible to imagine that three of its deported victims would not depart empty-handed. How desirable then that his Majesty's fiscal should have *access to their papers!* but this cannot be effected without a warrant from his Excellency, and warrants are not issued without cause. But, lo! Mr. Edwards's servant is seized; undergoes several *private examinations* by the fiscal; and the most sanguine desires of his Excellency are at once accomplished! The tide of sympathy undergoes a sudden reflux, and he sees his accusers depart with a disgraceful imputation attached to their names. But this is not all. A report is in circulation that Lady Charles Somerset has received, in the folds of a piece of sarsnet, a letter detailing her husband's intrigues with coloured women. How admirable, then, is the coincidence that this identical Daniel Lee should be able to give conclusive evidence upon *every point in question*, and against every individual who *happened* to be obnoxious!!!

Let us now look at the probabilities of this extra-

ordinary affair. The existence of the placard rests on the word of Captain Findlay. The assertion of Dr. Barry's clerk that he heard him read it, is improbable, from the circumstance of his returning to bed, and leaving his master's reputation crucified before the public; to say nothing of the stated assertion of Mr. Commissioner Bigge, *that he could not have heard it read;* or the questionable coincidence of his popping out of bed, on a cold winter's morning, at so critical a nick of time; and the man on the white horse proves to be the commissioners' coachman, who saw no placard, but only a man looking at a post. Then comes the testimony of Mr. Daniel Lee, *after being repeatedly closeted with the fiscal,* from whose evidence, it appears, that we, the conspirators, set so little value upon secrecy, in a plot, not merely affecting the reputation, but the life, that we sent this placard, from one to the other, in unsealed packets; and that it was indifferently shown to every person who visited his master. How extraordinary, then, that a reward of 20,000 rix-dollars should have elicited no copy of it, no accurate repetition even of its contents, nor the slightest proof that it ever was in being at all! It would be questioning the perspicacity of the public to offer another comment upon this dark nefarious transaction.

Let me here ask, what shall be said of a Government that could sanction so detestable a plot, and permit its effects to slander the reputations of respectable men; each of whom, so far from combining to affix this horrible crime upon another, would shudder at the bare mention of it? Where can another instance be produced of an attempt to consign honourable individuals to obloquy on the testimony

of *one* man, and him the lowest and most depraved of his species. How can the fiscal, in the utmost prostration of his servility, reconcile to his conscience, if he ever had any, the commission of acts in his conduct of this business of *palpable subornation*. Threats and promises were alike applied to this detestable miscreant; he was fed during its progress with the choicest viands, and served with wine from the *fiscal's cellar*; he subsequently confessed that he was *trained by the fiscal in person*, and has admitted that he *accused his master falsely!* Even after this affair had died away, and he filled the situation of police officer,—the fiscal's reward for his villanies,—he had the hardihood to profess being in the receipt of papers from me, and actually exhibited some unintelligible scrawls in pencil as a secret correspondence to which he only had the key. This was too barefaced; the rascal's folly was exposed to him, and he afterwards confessed to some of Mr. Ingram's people, that he was sick of his life at the Cape, *and did it with a view to get transported.* That his Majesty's fiscal should still profess his belief in the fabrication of this placard by the persons he found it so *convenient* to suspect, is but natural; for to confess otherwise would be a virtual admission of his own infamy; but, if he should ever dare express that belief where I can get access to him, I pledge myself to make the old Jew swallow every page of the Report in which he has so foully calumniated me.

It affords me some satisfaction to find the names of Messrs. Whiston, Witham, and Twaites connected with this affair of the placard, because I am quite satisfied they will avail themselves of the advantage of being on the spot to expose it truly, and

show the world how far such testimony is to be depended upon. If he has belied them, I shall be entitled to credit in saying he has belied me; and his unfortunate master, who, whatever may have been his former condition, was most *barbarously* treated by Lord Charles Somerset, will be exonerated also. During my four short interviews with him, which the fiscal is pleased to construe into an *intimate acquaintance*, I thought him a violent and injudicious man, but, I must add, in justice, about one of the last to attack his enemy with such a poisonous weapon. I view Mr. Edwards's case abstracted from any condition he may have stood in previous to his arrival at the Cape, and in that light only should it be regarded with reference to his history there. He was appointed to the respectable situation of notary public, as a man, of course, qualified to fulfil it, by Lord Charles Somerset himself, and he experienced his Excellency's persecution, and *savage relentless vengeance* in the character, for aught his Lordship knew, of a respectable professional man. His Excellency's treatment of him is not then the less justifiable from the fortuitous circumstance of his proving an escaped convict.

Upon the whole, this mysterious affair of the placard, which in all probability will never be unravelled, must remain a blot upon the history of Lord Charles Somerset's administration, which no time can efface. It exhibits all the characteristics of a plot, slovenly conducted, and with ill-adapted agents, but profoundly conceived and well calculated to attain its object, and it records no mean testimony to the tone of Cape morals, that no second villain should be found, whom this enormous bribe of 20.000 rix-

dollars could tempt to back the perjuries of Daniel Lee. When the characters of its actors is reflected upon, its failure appears a miracle. His Excellency is considered to bear his faculties with any thing but meekness. The capacity of Mr. Oliver, in matters of espoinage, is pretty notorious, and his Majesty's fiscal is generally belied, if "the compunctious visitings of nature" ever operated upon his bosom. But where shall we find a justification for the Commissioners of Inquiry for making it a subject to report upon? or, if they did think its scrutiny a duty incumbent upon them, to have discharged it in the way they *have* done? As a mere ex-parte accusation, unsupported by proof, with no prosecution founded upon it, and all further research into its merits relinquished by the Government; as impartial men, nay, as gentlemen, they were bound to give the *whole* of the examinations or *none*: instead of which they have only extracted the testimony of the trained miscreant, Daniel Lee, and suppressed every other tittle of evidence. Why not publish the examination of Captain Findlay and Dr. Barry's clerk, of Edwards, Wilmot, and their own coachman? Why? but because their evidence made the very existence of the placard so problematical, as to stamp the proceedings which followed with greater folly and injustice.

I have only to advert to the concluding statement of the commissioners, "that the fiscal, in searching my papers, found writings reflecting on the character of Lord Charles Somerset, Mr. Rivers, and Judge Ryneveld. With regard to the fact, the fiscal must assuredly did discover several papers recounting some of his Excellency's exploits in no measured terms; and, if he had access to my study at this mo-

ment, he would find two tables groaning beneath the weight of similar documents; and these were possessions to be found in the desk of hundreds throughout the colony. Among the fiscal's discoveries was a ballad, written by some one on the frontier, justly exposing the infamous affair of the Graham's Town riots, and upon which, *from the matters it discussed*, the learned gentleman was well aware his Excellency would not have *dared* to found a prosecution. This he wisely requested I would destroy, which I did in his presence; but what was the next writing inculpating the conduct of his Excellency which fell beneath his inspection? Why, the very document in request, the specific object of his search, *the very ballad, to seize which his Excellency had granted his warrant.* This he opened, then carefully replaced; and it was discovered thus deposited, immediately after his departure, by Mrs. Burnett and the master of the house. Whence the motive for this extraordinary conduct? Was it an act of treachery to his Excellency, or of judicious conservation of his fame? If not the former, it must be manifest that he either dreaded the appearance of the ballad in a court of justice—and it really makes one shudder to apply the term to a Cape judicatory—or that it was too innocuous to warrant another transportation. Such, however, is the fact, though no no doubt the Commissioners of Inquiry will find some method in their *next* Report of extricating him from his dilemma. The next paper was an impromptu, and if it exhibits any verisimilitude between Harry Rivers and the puddles of Africa, he is heartily welcome to the likeness: and the last was an epitaph upon Judge Ryneveld, written many years before my arrival in the colony, and given to me as a specimen of good

verse. How far the deceased Judge was worthy of the character it exhibits I cannot possibly pronounce; he died many years before I ever saw the Cape, and I never saw his name mentioned, but as a person who was implicated in the nefarious sale of the Zureveld to the Caffres, and who shot himself in consequence

HAVING now replied to the Report of the Commissioners of Inquiry, and, I trust, satisfactorily redeemed the pledge made to the public that I would prove it to be grossly partial, and a tissue of distortion and falsehood throughout, I shall proceed to the notice of that portion of my petition to Parliament, upon which the Commissioners have thought proper *not* to report; and conclude with a brief notice of the exhibits.

A very mistaken impression was imbibed by the House of Commons, and the country generally, as to the character of my petition to Parliament; and the hired part of the press amused me a good deal by storming at accusations which I had never advanced; that is, constructing an hypothesis of its own, and then indulging the public with its conclusions. Earl Bathurst made precisely this mistake in his despatch respecting Mr. d'Escury. If the reader will refer to my petition, he will see this passage: "Nor, your petitioner most humbly submits, can a pure and unbiassed judgment be looked for in causes of appeal to his Excellency, where a *malus animus* may be said naturally to exist, as in the case of the Dutchman Durr, who succeeded in causes wherein he was appellant to his Excellency, shortly after the purchase of one of his Excellency's horses for ten thousand rix-dollars, which died after payment, and before delivery from the stables." Now this was by no means charging the noble Governor with having sold a legal judgment, as a sort of make-weight, with a dead horse for ten thousand dollars; but merely pointing out the awkward position in which his Excellency placed himself when he allowed such *judgments* and such *sales* to become *simultaneous* operations. By the same mode of reasoning, we should think rather strangely of Miss Such-a-One, if we saw a gay military Lothario escaping through her bed-room casement at day-break; but we should not venture to call the lady names, because he might have got in *by accident*. It appears, therefore, that his Majesty's Commissioners

of Inquiry are the only persons who have done me justice in this particular: for, as the above passage merely points out what *might* be the inferences from such premises, the Commissioners have very *wisely* deemed it superfluous to notice a circumstance not in direct accusation, but merely glanced at incidentally; and hence, very probably, their silence on the subject.

Lest, however, it should be thought that I am prone to exhibit charges with rashness and precipitancy, I shall now go a step farther, and say, beyond what I did to Parliament, that the sale of the horse Kutusoff to John Martin Durr, was not a transaction merely putting the respectability of the King's representative in jeopardy, but was considered by Durr himself the sale of a legal judgment. It is simply this: that Lord Charles Henry Somerset, then Governor of the Cape of Good Hope, in his capacity of Judge of the High Court of Appeals, did rescind a decision of the lower Courts in favour of the said John Martin Durr, at the time of selling him a horse for the sum of ten thousand rix-dollars, which died before delivery; the price having been paid, and the money never since refunded! And if Earl Bathurst will *permit* me to prove this at the bar of the House of Commons, *I will readily forfeit my existence if I fail.*

But at once to show the world that this description of dealing is quite common with his Excellency, and the case of Durr and the defunct Kutusoff by no means an isolated one, I will detail the first of seven or eight others, and submit for perusal some extraordinary documents "thereunto belonging." The public will then be enabled to form, by analogy, a juster estimate of my pretensions to credit for the statement which it constructed into a charge in Parliament.

There is a spot of land at the Cape called the Hantam, situated on the summit of a hill so very extensive as to form an area of forty miles in circumference. This land has ever been considered of great value to the inhabitants of the neighbouring country, as a general pasture for their horses when the periodical sickness takes place, as it is exempt from this evil. It is also bounded by numerous farms, the occupants of which have considered it, time out of mind, a sort of common right; consequently, it could not be granted to an individual without prejudice to the public. A burgher named Ockhuysen being desirous to possess a portion of this land, and knowing, from the *universal* opinion, that the best way to insure success was first to buy a horse of his Excellency, entered into a treaty for the purchase of the stallion Sor-

cerer, at the price of ten thousand rix-dollars; which is equivalent, in the estimation of a boor, to *two thousand pounds* sterling; one Poggenpoel, his Lordship's negociator in horse transactions, assuring him, that *if he buys the horse, he shall get the land.* The two following letters from Poggenpoel to Ockhuysen will show the nature of the negociation up to a certain pass, and pretty well illustrate the character of his Lorship's horse-dealings in general:

"Cape Town, 1st August, 1817.

"My good Friend,—After his Excellency having expected you four weeks in vain, as you had fixed that time for your return, at last arrived here at the Orphan Chamber, a boy of the widow Louw's, bringing the inventory of her estate, without a letter from you, or being able to give the least intelligence respecting you, though you were there when he left, of which I was obliged to inform his Excellency, who was not a little surprised not to hear any thing from you by that opportunity.

"His Excellency requests to know from you, *without delay*, whether you consider yourself to have made the purchase of the young horse; but if you should have renounced the purchase, then you must recommend this horse, and the two that follow him, to the country people for the prices I shall prescribe to you; but should you consider yourself as having made the purchase, then you recommend only the two that follow, at—

"1st. The young horse, *purchased by you conditionally*, for the price of 10,000 rix-dollars. 2d. The two following, each for the price of 7000 rix-dollars.

"You must bear in mind, that the covering season is at hand; if, therefore, you can sell the one, or *all*, the purchaser or purchasers must declare themselves as soon as possible; the conditions of sale will be made very acceptable to the purchasers; the purchasers who have no ready money can keep it on interest for two years under good security.

"But if at first there are no purchasers for the horses, you can hire them all out for the season in the districts of the Roggeveld, Hantam, and Bokkeveld. The first stallion, for covering thirty-five mares, 3500 rix-dollars; and the two following, each for covering thirty-five mares, 2,000 rix-dollars; so that if any one has five mares to cover by either of the two last stallions, he must pay 400 rix-dollars, ten mares 800, and so on in proportion; and the young stallion, 100 for each covering. You will also be so good as to state to his Excellency the place where there is good stabling and forage for them, in order for his Excellency to make an agreement with those people for the stabling of the stallions.

"It is his Excellency's earnest wish to sell them all, for it is of the greatest importance that these selected stallions, of which I need not give you any description, having seen them, should be sold in those districts, being the principal districts for horses, to insure the improvement of the breed in the colony: Captain Christopher, who, in the month of January last, left this with 16 or 20 horses for Bengal, having made a fortune. The least valuable horse he has sold for 4,000 rix-dollars: the horse Prince of Orange he sold for 4,500 rix-dollars, so soon as the second day after his arrival.

Ockhuysen, you will receive this by the post per express from Field Cornet to Field Cornet. I have written in a great hurry at Lord Charles's. I have given directions to the messenger Money, who is at this moment with his

Excellency, you will not therefore neglect to set off as speedily as possible for this place, with a clear account to his Excellency of what you have done.

I am, under favourable expectancy, in a great hurry, for it is already two o'clock.—Your good friend,

P. POGGENPOEL.

(Addressed) To the Burgher Ockhuysen, at the
Groote Farm, District Clan William.

The respective magistrates are desired in the name of his Excellency to forward this letter as speedily as possible.

P. POGGENPOEL.

Sent from Town the 2d August 1817. Post Office.

MY GOOD FRIEND, Cape Town, August 16, 1817.

I have received your letter without date by Jan Nell. I am sorry to be obliged to inform you that the contents of it appeared not only to me, but also to his Excellency, whom you wished should read the same, to be very unintelligible; it says much, and nothing; whatever may be the case, I can tell you for your information, that *his Excellency is extremely surprised how you can say not to be certain whether or not you can obtain the land asked for;* are there not two land-surveyors appointed to the Drostdy of Tulbagh, one of whom could at least, in the long interval of eight weeks, have rode to Clan William to examine this land in the presence of the deputy land-drost? In the meantime his Excellency requires of you positively to state, without any *subterfuge*, whether you intend to have the horse bought by you (conditionally) for the sum of 10,000 rds.—yes, or no?—and in case you have, according to my former letter, appointed for one or more of his Excellency's stallions to be there this season, you must then still, before the end of this month, send to his Excellency one or more lists signed by those individuals who wish to have mares covered. You are to direct your letters *to me*. You must make out the lists in the following manner: *four, five, six, seven, eight, nine* or more persons, who together will make up the number of mares to be covered by one stallion, and feel inclined to have their mares covered by such a stallion. They have to sign only for such a sum as for which such a stallion is to cover. In order to prevent misunderstanding, the money can be paid when the covering is done.

The stallions are in no ways at the risk of the inhabitants, they are at the risk of the Governor, who will also provide the grooms; it is therefore necessary he should be first made acquainted in writing who the persons are who wish to have mares covered, as without it the stallions would go there without his Excellency's desired object being obtained.

Your answer hereunto will in some degree pacify Lord Charles, who in the meantime has already inquired respecting you of the landdrost Fischer. I am, in haste, your friend,

P. POGGENPOEL.

P. S. This ought properly to have been delivered to you by J. Nell, but he left town at two o'clock in the afternoon of Friday without my knowledge or that of his doctor. You may tell him quietly that both the doctor and *myself* have done with him.

(Addressed) To the Burgher D. C. Ockhuysen,
Hantam District, Clan William.

By his Excellency's directions, these presents to be forwarded without delay.

P. POGGENPOEL.

Sent from this on the 16th August, 1817.

These letters clearly establish two facts, that Ockhuysen had *conditionally* bought the horse Sorcerer (for though his name is not mentioned, it is in evidence before the Commissioners of Inquiry that the horse alluded to is Sorcerer), and that he was a suitor at the same time for a grant of land, the extent and locality of which is recorded in the proper office at Cape Town. Whether Ockhuysen was too poor to muster the ten thousand rix-dollars, or whether he hung back from incertitude as to the grant, does not appear; but a *promise* of the land, and a *conditional* purchase of the horse manifestly go together; and his Lordship appears to be surprised, nay, angry, that Ockhuysen should delay the final purchase of the horse from any apprehension of not getting the grant.

In the neighbourhood of the Hantam, a Mr. Van Reenan held some land to which he was desirous of an addition. He accordingly memorialed for an immense portion of the mountain; but having occasion to dispose of his land to one Louw, he transferred with it such preferable right as his application for the adjoining land might entitle him to. When Louw died, his widow, upon this ground, renewed in her own behalf the same application Van Reenan had formerly made; and not receiving any answer, she grew so impatient and uneasy, as to repair to Cape Town for the purpose of looking into the matter. On her arrival, she met Mr. Van Reenan, whom she immediately attacked, under the impression that, taking advantage of her husband's death, he was acting upon some sinister designs of his own. Van Reenan thus charged, undertook to speak to his Excellency in the widow's behalf, and explain to him the nature of the solicited grant, and his transaction with the widow's late husband; and to pray his Lordship to confirm it to her. His Lordship *objected, that the extent of it was too great to be granted*, and showed himself *disinclined* to comply with the application; but a second interview took place, when his Lordship asked Mr. Van Reenan, *whether he had seen his horses?* adding, that there was one among them *particularly well calculated for the Hantam*, and the horse thus recommended was the identical Sorcerer, which Ockhuysen had at the time *conditionally* purchased; the condition of that purchase being, on his Lordship's part, a grant of part of the very land the widow was now soliciting.

Whatever were Mr. Van Reenan's impressions we shall not stop to inquire, as he hurried back to the widow, and so *strongly pointed out to her the necessity of buying the horse*, that she consented; but it was necessary to consult her father. The horse was in consequence sent with Mr. Poggenpoel to the Hantam, where he met Ockhuysen, who, although he had relinquished the purchase of Sorcerer, entered, nevertheless, with much zeal into the views

of his Excellency; for he accompanied Poggenpoel to old Louw's, the widow's father, in order to recommend the purchase to him also. Louw showed himself disposed to accede, although he had never seen the horse any more than his daughter; and desired Ockhuysen, the scribe of the district, to write for him to his wife and daughter, then in Cape Town, *that should they make the purchase of the horse, it must be on condition of the latter obtaining all the land she had asked for*, AND NOT TO MAKE THE PURCHASE WITHOUT IT. Upon this Mr. Poggenpoel returned immediately to town, bearing the letter to the females, who finally agreed upon the purchase. Mr. Fischer, the local magistrate, was accordingly directed, that without referring on the subject to the deputy landdrost, he should report on the memorial of the widow Louw, an essential colonial form, to give legality to a title. It must be here observed, that during Ockhuysen's negotiation for the horse and land, his Lordship manifested a great disposition to despatch all the necessary forms, even to a suggestion, that as Ockhuysen was an alien, he had better take out a burgher's license, to qualify him for the tenure, which was done accordingly; and the same expedition is here observable in favour of Mrs. Louw; for the *objections made to the extent* of the grant, when Mr. Van Reenan first applied on behalf of the evidence, were not only forgotten, but every subsequent one *officially* made, and carrying the most decided connection of its impropriety, was equally looked over; and this fine grant, originally partly promised to Ockhuysen, consisting of 20,708 acres of land, was confirmed to Mrs. Louw, on her undertaking to purchase the horse Sorcerer for 10,000 rix-dollars.

The whole of this statement, in every minute detail, including also Mr. Poggenpoel's letters, *is in evidence before the Commissioners of Inquiry.* It cannot be falsified, for I am in possession of that evidence, nor can the transaction, as it stands, admit of any palliation. We here see his Majesty's representative in a character disgraceful to the gentleman, prostrating his word, his honour, and his conscience, to a lust of money; contemning all wholesome restraint upon his licentious power, and setting at defiance those checks imposed upon it by the wisdom of the King's ministers. Nothing can be more flagrant than this damning case, which exhibits the *intended* sale of the horse Sorcerer to Ockhuysen, and subsequently the *actual* sale to Mrs. Louw, or her husband Redelinghuis, with the land in the first instance promised, but not granted, to the former, who *did not* buy the horse, but ultimately granted to the latter, who *did* buy it. In the one instance, a *blemished* horse, only fit for breeding purposes, is sold for *two thousand pounds sterling* in the estimation of the purchaser; and

in the other, a grant of 20,708 acres of land is made to the prejudice of various other persons, against the official protest of the functionary deputed for its conservation; and that conscientious individual is now under the ban of the whole Beaufort power for thus honourably discharging his duty; while, even rejecting the inseparable circumstance of the horse, the widow had so little use or pretension for the land, that she was deficient in stock for what she already possessed, and actually *sold the whole as soon as she obtained her title*. The considerations arising from this transaction, to a person so intimately acquainted with the colony as I am, are absolutely appalling. I cannot but think of hundreds of poor persecuted English settlers huddled together, and at eternal war with their neighbours for trespasses over their hundred acre boundary, vainly imploring of his Excellency, or the more tyrannous *local* despot, a little additional elbow-room, and the slights, the contumely, and the insolence to which they have been subjected; but I beg of them to receive this consolation at my hands, that if it costs me my existence to accomplish it, their cries shall be heard by their country, and the nefarious doings of Lord Charles Somerset's administration at the Cape be proclaimed to the whole world.

I am actuated by no vindictive feeling in giving this case publicity, for it must very soon attain that as a Parliamentary document. It is a measure imposed upon me by the servile part of the press, and if I am dared to give further specimens of his Excellency's government, I have *abundance* more to furnish. In a short time the public will be acquainted with their whole extent, and it will be then seen how far I have merited the slanderous abuse so lavishly bestowed upon me. One obscure print, in a language strictly appropriate to the condition of its editor, described my petition as "flying a kite," and laughed outright at the idea of Lord Charles Somerset selling what it facetiously called a dead horse. The writer was, doubtless, loth to see a scion of John of Gaunt, however perfect in the intermediate stages of the science, degraded to the condition of a knacker;* but so it is; and the total silence of the Commissioners on this part of my petition to the House of Commons, will not escape the observation of the discerning.

Another point in the petition which the Commissioners have passed over, and I suspect from the same motive, because it would not bear investigation, is the following paragraph of my petition to Parliament:—

"That your petitioner had recently been the accidental medium

* Knackers, I believe, are in the habit of *selling* as well as buying dead horses.

of vindicating the character of Captain Stockenstrom, landdrost of Graaff Reinet, from aspersion, and rescuing him from a conspiracy, the aim of which was to degrade him in his regiment, and displace him from the magistracy; as a reference to the proceedings of a Court of Inquiry held at that period upon the conduct of Captain Stockenstrom will clearly establish; and that your petitioner, in consequence of this occurrence, became forthwith obnoxious to the colonial Government."

As I trace the origin of the Governor's persecution to this circumstance, I shall briefly relate it. On his Excellency's departure from the colony in 1819, some attempts were made to induce Captain Stockenstrom, of the Cape Corps, to relinquish his drostdyship of Graaff Reinet in favour of Captain Somerset, but this failing, the latter was supposed to bear his disappointment with no very amiable feelings. Power has at all times enough of servility in its train, and the Commandant of a frontier, in a colony governed by his father, has not far to look for a parasite or a bully. A Dr. Knox, the intimate friend, as the world words it, of Captain Stockenstrom, thought proper to quarrel with him, and, according to custom, betray every secret he had confidentially reposed. Some slanders were circulated—reached the regiment, and poor Stockenstrom, without knowledge of his offence, was sent to Coventry. After vainly seeking an explanation, he demanded a Court of Inquiry, and I believe *one* was held without his becoming a bit the wiser. Disgusted with this state of things, he applied for a second, at which juncture I first arrived at Graham's Town. At my host's table I occasionally met Dr. Knox, from whom I received a deplorable character of Captain Stockenstrom, including the specific causes of his disgrace with his regiment. During the sitting of the Court, Captain Coote of the 54th, one of its members, dined with our party, and the conversation turning to the pending inquiry, I learnt, with much surprise, that the officers of the Cape Corps refused giving testimony before the Court *without the sanction of their commanding officer;* which sanction, it appeared, was hard of attainment: and that Captain Stockenstrom, high in the estimation of every body but his commanding and brother officers, would again have to return to the bosom of an amiable family, traduced and blackballed, without knowing why. I observed to Captain Coote, that condemning a man without so much as acquainting him with his offence, was not according to my notions of equity, and if this was the only difficulty in the way of Captain Stockenstrom, I could easily remove it, by apprising him with what he was charged. Captain Coote replied, that in doing so I should essentially serve a worthy honourable man; and from

this information I was summoned the following day before the Court. It will be sufficient to say, that my testimony was productive of Captain Stockenstrom's *complete triumph*, and procured me the thanks of the Court. Dr. Knox subsequently insulted me for thus doing an act of common justice, and the affair finished by my posting and horsewhipping him, receiving, however, in the scuffle a slight wound from his sabre *while I was unarmed.* It will hardly be believed that Captain Stockenstrom's brother, now in England, with whom I had never exchanged twenty words, has since vilified me to several families, with a view to Lord Charles Somerset's patronage.

In looking over the appendix to the Report, I see little to attract attention, and less to provoke remark. The account of the trials at Graham's Town is garbled and falsified; and that for the libel very imperfect. The communications to the Commissioners of Inquiry from the fiscal and Mr. Harry Rivers, are just what might be expected from such persons; poor devils, they cannot help it, and I pity the latter from my soul; for, from tidings just received from Cape Town, after being the pliant tool of his patron for a number of years, he is now a victim to his treachery. The opinions of Sir John Truter excite no other emotion in me than contempt; his utter subserviency to the Governor is proverbially known, and a little episode in the Appendix will illustrate some other points of his character. Captain Trappes's answer to the Commissioners is one mass of falsehood throughout; and Lieutenant-Colonel Somerset's is equally distinguished for a convenient forgetfulness, and a disregard of truth: but if such men as his Majesty's Commissioners of Inquiry find their account in being partial, it would be preposterous to expect truth from more *dependent* quarters.

Throughout this arduous contest, upon the merits of which I am gratified in finding there are not two opinions, nothing has given me so much real satisfaction as the universal notion of the character of this Report. Friends and foes, ministerial men and oppositionists, one and all, have declared their decided conviction of its gross partiality; nay, the bitterest enemy I have in existence was heard to admit this without hesitation; and I flatter myself this sentiment will not be abated after the perusal of my Reply. It is fortunate, too, that no research for motive is required. Cause and effect here go together; for if it is conceded that the Commissioners have made a partial Report, the object of that partiality is equally manifest. These gentlemen have furnished Mr. Wilmot Horton with a fruitful source of pretext for a long time past; during the last two years every Cape suitor at Downing-street has

had nothing dinned into his ears but the Commission of Inquiry. I now trust this subterfuge will be no longer found availing. That the Report was intended to rescue Lord Charles, by crushing me, is not only manifest from its very character, but *I can prove this to have been the assertion of a high servant of the state not three months since!* No doubt he little thought his confidence would be abused; but he was imprudent enough to avow that a motion in the House was meditated early this session, exculpatory of his Excellency, grounded on the Report of the Commissioners against me. Such a measure, I am well satisfied, cannot now be attempted; but if so, it must be a bold experiment, indeed, after this my public avowal, that I have SIXTEEN CHARGES OF MALVERSATION to exhibit against Lord Charles Somerset in Parliament during this ensuing session.

The public will now be able to decipher Lord Bathurst's real motive for preventing my return to the Cape of Good Hope, to collect evidence in support of my petition to Parliament. This permission would have frustrated two objects. It would have accelerated the inquiry into Lord Charles's conduct a whole session of Parliament, and effectually have stopped the manufacture of the Commissioners' Report. This was an act of injustice that cannot be extenuated, when it is considered that I was hunted out of the colony without the opportunity of making any arrangements for this purpose, or the means of bringing witnesses with me; nor, otherwise, would it have been respectful to his Majesty's Government so to have done; or to have entertained a suspicion that state policy made it necessary to sanction Lord Charles Somerset's injustice, and compel the victims of his oppression to resort to Parliament for redress. As every subject of the realm has an equal right to the protection of his Government, and as we are instructed from infancy to regard that Government with veneration and confidence, the natural, as well as just, expectation is, that no man will be elevated above the laws, and countenanced in the outrage of every social obligation, and the more exalted the individual the more necessary that his reputation should be without taint; but how is it with Lord Charles Somerset? he seems endowed with extraordinary privilege of trampling upon his fellow-creatures, of acting at the instigation of a caprice as boundless as it has proved destructive, and of obeying its inordinate impulses without control or responsibility. If this system is to continue for ever, it should be formally and authoritatively announced that the colonial subject may regulate his conduct accordingly, and not, in addition to the injustice which drives him to complain, experience

the farther persecution of the power from whom he vainly seeks redress.

The public would scarcely credit the means adopted to stifle complaints againt the Governor, and to crush his accusers, every artifice the most ingenious cunning can suggest is put in practice. His hangers-on are disseminating slanders against me in every direction, and so great is the influence of this combination of power upon the nerves of the timid, and the passions of the calculating, that I could name a whole string of *Cape merchants* who have in secret expressed the most boundless detestation of Lord Charles and his measures, given *private* information against him to various Members of Parliament, and meditated an organized application for his removal; while in public they have greeted him with fulsome servility, whined a bacchanalian knell over his departing virtues at the celebrated *last* dinner, and dragged him in his chariot to the spot of embarkation! This, thank God, is a course I cannot be charged with, his Lordship must at least do me the justice to admit that if I am an enemy, I am an open and manly one.

There is one imputation of the Government press that I cannot conclude without repelling: it is, that I have influenced some of the newspapers, and made them the vehicles of attack upon his Lordship for *four years past;* now this I utterly deny; I have not been twenty months in England. I never made but one communication from the Cape, and that was an account of the flood, to the Editor of the 'Morning Chronicle,' which I have since heard was mainly productive of the subscription for the relief of the sufferers. I have since sent but three articles to the 'Times,' each bearing my signature, and none to any other paper, so that, in this respect, I have been most grossly slandered. As I protest then against this in my own case, so would I scorn making it the engine of annoyance to others. No man entertains a greater veneration for the *liberty* of the press than myself, for no one, perhaps, ever looked so exclusively to it as I do for the means of achieving a triumph over persecution. Under judicious and principled regulations it is a great blessing; it diffuses knowledge, unmasks villany, and is the pendulum which regulates the whole social machinery; but I abominate its licentiousness, and if there is one character in the world more hateful than another, I give the palm of ineffable infamy to the prostituted hireling, who, without even the despicable palliation of being actuated by malice or revenge, derives his beastly support from the blood and vitality of assassinated reputation.

# APPENDIX.

## STATEMENT OF MR. BURNETT, TO THE COURT OF CIRCUIT, IN 1823.

In laying before the Court the facts necessary for its guidance to a strict and impartial appreciation of the various points at issue between Mr. Hart and myself, I must unavoidably enter into much detail; but, as what I have to say will apply generally to all the causes pending between us, this course will, in the end, prove less tedious than by the introduction of every action with its specific exordium.

I must first call the attention of the Court to the commencement of Mr. Hart's hostility; because, in a perception of its motive, it will discover nothing that can possibly be pleaded in justification; on the contrary, it will perceive it to originate in a malice, deducible from causes that in any honest mind should have promoted a very different order of feeling, or in a cupidity that has made this the ostensible one, while the real incentive to his persecution is a desire to convert the fruits of my capital and industry to his own purposes.

I dwell with distinct emphasis upon this feature of the proceedings; because, in the admirable spirit of the colonial laws, which make a pure equity their rule of adjudication, is to be found the strongest hold the suitor can seize upon, in defending himself against malice, persecution, and revenge! I accuse Mr. Hart of having been all along governed by these feelings, and if the evidence I am about to adduce bears out the charge satisfactorily, proportioned to the injury I have sustained by their operation, will be my title to a liberal decision of the Court.

The last time I had any personal communication with Mr. Hart was about the middle of my first year's occupancy of his farm. We were then on customary terms of cordiality; nothing had occurred to create misunderstanding between us; indeed, within a day or two of this meeting, I had partly engaged to build a house for him in Graham's Town. At this interview, he suggested, in a very *considerate* manner, the expediency of my devoting less expenditure to embellishment, and more to profit, than I had hitherto been doing upon the farm, and certainly under circumstances which could attach no sinister motive to his advice, because but a few days before, (in *confirmation* of a declaration I had long made to him,) a *bona fide* sale and transfer of the farm had taken place, and he had named to me Mr. Commissary Johnstone, or Mr. M'Donald the storekeeper, as persons to whom, at my convenience, I might pay the first instalment of the purchase-money.

Upon this understanding the title had long been placed in my possession, and I am satisfied that Mr. Hart as much considered the farm my legal property, as positive intention, good faith, and single-minded dealing could make it. Had I reflected, that the high moral law, called honour, is not of universal potency, and that neither prosperity nor a tailor can make the gentleman, I should have that to lay before the Court, in confirmation of what I now assert, which a reliance upon Mr. Hart's integrity deprives me of.

Within a very little time of this interview, a circumstance occurred at Graham's Town, equally remarkable for its development of ingratitude, and for the application Mr. Hart has made of it to the purposes before you. Through the intervention of Major Somerset my character was redeemed from the consequences of a slander, too execrable for any vice but ingratitude to have engendered, and a man named Bennett was banished the district in conse-

quence. Mr. Hart, far from discerning supernumerary motives of forbearance in the fact of my escape from the results of a conspiracy between this miscreant and his own son-in-law, for which they are still to this hour at my mercy, could see nothing but a blemish in the family escutcheon; 'something *worse* than a bend sinister in the arms of the Harts! which nothing short of my ruin could atone for. This, gentlemen, I solemnly aver to be the fact, however expedient it may be to shroud it in a detail no doubt very different to mine.

Shortly after this affair, I received a letter from Mr. Hart: this letter, gentlemen, will be laid before you. In its contents will be amply illustrated what I have just advanced, bearing in mind (as your perspicacity will do) that no sort of intercourse had taken place between us, from the interview spoken of, until the receipt of this letter.

This *insulting* letter will clearly establish two facts:—the building scheme, and a change in Mr. Hart's conduct; no other way consistently to be accounted for, but in the public degradation of his relations: it follows that Mr. Hart has sought my ruin, simply because these persons failed in accomplishing it beforehand! The allusion in the letter to a deficiency of funds, must, I should imagine, point at me,—hence its insolence! for I believe no one scandalous as we are in this district, has had the temerity to question Mr. Hart's capacity in this way, whencesoever he may derive it; and no doubt, while his Majesty's executive in this colony finds it politic to discountenance all other predial pursuits, by the maintenance of this *extraordinary* establishment, Mr. Hart will still *flourish*, exempt from any reproach of pecuniary incapacity.

Mr. Hart now commenced legal proceedings against me for the recovery of a debt accruing upon a sale of cattle, whether honestly or not, is unimportant to the Court, unless my sacred assertion may be borne, with other recollections, to my advantage, that Mr. Hart, in this respect, *infracted* his engagement. Whether the prosecution of this suit was conducted with proper and legal formality, I am not sufficiently acquainted with the laws of this colony to determine; but I *will* venture to say, without any hesitation, that the mere leaving at my house two or three papers in Dutch, and the manner of pursuing the action at a distance, absolutely depriving me of all possibility of defending myself, must, at any rate, be considered a very invidious proceeding, when its ruinous consequences are taken into consideration.

On this sentence being obtained against me, I was applied to by the sequestrator's agent for payment of its amount: it is true I had not the pecuniary facility of *directly* discharging it, *but* I had property *more* than commensurate to any claims upon me in the colony, as subsequent facts have proved. This property was mortgaged to the firm of Ebden and Eaton; but for a sum which makes it manifest on the slightest inquiry, that a sufficient surplus would be available for the liquidation of every demand against me; and that no manner of necessity existed for adopting the cruel, arbitrary, and illegal measures which were subsequently pursued.

After this official information, a considerable period elapsed without my hearing further upon the subject; a delay which I sanguinely ascribed to the interposition of his Excellency the Governor, as I had memorialed him upon the peculiar hardship of the case; and the very injustice and persecution of the Government had absolutely been productive of the dilemma I prayed to be relieved from! The sentence was at length returned, with orders from the sequestrator to bring my property forthwith to public sale; to order the discharge of my labourers and servants, and to restore the farm called Thorn Valley to Mr. Hart, after a valuation of my improvements upon it. This order was read to me by Mr. Rivers the landdrost, in the presence of the district secretary; and my answer was in terms to this effect,—That I *had* property *more* than sufficient to meet the sentence, although mortgaged to Messrs. Ebden and Eaton; that the order respecting the farm was a proceeding evidently erroneous, inasmuch as the value attached to the lease was the property of my creditors, whose interests would not permit them to wink at a proceeding so partial and irregular.

To my inquiry, Whether I was strictly forbidden to keep *one* servant as an

attendant upon Mrs. Burnett? I was answered, "Certainly not;" with a *further* intimation (as ordered by the sequestrator) that no manner of attention would be paid to any thing I might again advance in stay of the proceedings, but that my property must be immediately brought to sale.

I have here to encounter a difficulty, which I must look to the indulgence of the Court for the means of surmounting. A communication * *likewise* took place at this interview with the landdrost, which I have not disclosed, because it involves proceedings still in progress, upon the termination of which a most important question hinges; and that termination would be certainly influenced against me if *any* public discussion of this communication should prematurely arise. The Court shall, however, be strictly satisfied of the inexpediency of pressing me upon this head, as well as that the suppression of the fact alluded to must, if it bears at all upon the question before them, operate to my disadvantage.

That justice should require such *rigid* austerity of execution as the utter annihilation of a settler's prospects in the colony, and his credit every where else, for the recovery of 900 rix-dollars, in right of a man upon whose property I had lavished more than double that number of thousands, appeared to me so monstrous an anomaly in its administration, that I thought it necessary to protest, in the strongest language against such proceedings; but, as a comparison of dates will at once prove it was not attributable to this protest, neither was it attributable to the paternal lenity of his Excellency, (as my application for grace had been long peremptorily refused,) that they were very soon suspended, by a caprice just as *fickle*, *arbitrary* and *unaccountable* as that in which they originated. That Mr. Van der Riet would have *dared*—I say DARED, gentlemen, because it is impossible to apply a weaker term to such palpable indiscretion—that he would have DARED to have thus sported with my property, pursuits, character, peace of mind, and (for aught *he* knew) my very existence in such a colony of pauperism, wherein none but the satellites of the Government thrive, without higher sanction, is a proposition, I am persuaded, no rational being will venture to maintain, unless with imputations disqualifying him from a sound performance of the functions with which he is delegated. If, agreeably to the tenor of his advertisement, I *was* insolvent, he had no *manner* of discretion in the case before him; the laws *only* were his guide; their sovereign prescription *alone* was his rule of conduct, from which to deviate was at *least* to incur responsibility, if not to deal injustice.

My property *should* have been sold. If, on the other hand, he *did*, in sufficient time, discover something like rashness and inconsideration in the measures he had adopted, how *infinitely* incumbent on him was a frank *avowal* of his error, beyond the obstinate pertinacity he has shown, to the complete *delusion* of the defendant, and the infliction of injury he can probably neither contemplate nor redress! but that (in my opinion) he stands blameless on this point, is a tribute to his consistency I cannot withhold from the Court; for it is my firm belief that Mr. Van der Riet, in *all* the official measures he has conducted in my particular case, has acted under the *advice* and *indemnity* of a superior functionary; while it must be admitted, that the whole tenor of his proceedings makes *this* insinuation the highest compliment I can pay him. This was formally notified to me on the 22d of July 1822, while on the 24th came another notice, that the improvements of the farm would be valued the following day. To the conduct of this assessment I particularly call the attention of the Court, as a proceeding *flagrantly* unjust, and marked by the grossest indecency on the part of Mr. Hart. In a case where interests of such importance were at stake, a *show*, at least, of impartiality was expected, however adroitly Mr. Hart's colonial experience might have contrived the intro-

* This communication was the very tender of the forage claim, which Mr. Rivers has found it convenient to deny being made: and the difficulty alluded to was my fear that if the subject was named in Court, steps would be taken to prevent its discharge; which, from Colonel Somerset's solemn promise, I expected by the ensuing post. And the payment of this claim would have defeated the whole conspiracy.

duction of *some* little characteristic obliquities; but here, (to use the words of a great orator,) "the reciprocity was all on ONE side." Mr. Hart had it ALL his own way; and *then*, not satisfied, (as if suspicious of the very agents he had gleaned from all Graham's Town,) he accompanied them in person, to give poignancy to the ruin he meditated, by the cowardly infliction of a malignant and cold-blooded insult! Mr. Reteif (however respectable a man) was nevertheless the intimate acquaintance and friend of Mr. Hart; and Mr. Van Roynen, a very honest burgher, stood much in the same relation. These considerations *alone* made the selection highly invidious; while Mr. Hart and myself, as denizens of one land, only separated by the river Tweed, could certainly, in the nomination of our own countrymen, have attained all the ends of a just impartial appraisement; but infinitely beyond this consideration, it is against Mr. Reteif's *incapacity* that I point the force of my protest. How can he *possibly* estimate my expenditure by his own rate of disbursement? Mr. Reteif, with the aid of slaves and Hottentots, can construct dwellings, under contracts, to him of profit and emolument, which would plunge an Englishman into ruin! And as Mr. Van Ronyen has probably not been in the habit of making allowances for embellishments, I *maintain* that these two persons were *singularly* unqualified to fulfil the task imposed upon them. That *other* motives also influenced the choice of Mr. Hart there cannot exist a doubt; *some* of them I have developed, and these will be laid before the public, not long hence, in the results of an investigation I shall spare no effort to promote.

On the 26th, I received a peremptory notice to quit the farm in twenty-four hours; and on the 28th, a summons from Mr. Hart to return to him my title-deeds by his messenger. Observe, gentlemen, *all* the spontaneous acts of Mr. Hart! no *legal sanction* to such proceedings from Cape Town, or even the local authorities here! all the lofty emanation of that uncontrolled despotic spirit, *hitherto* unopposed in its mandates, from the flagellation of a drunken Hottentot, to the boasted independence of his patron, and opposition to that patron's son.

In the consequences of these proceedings I have now to bring to the notice of the Court the injury I have sustained. I shall not occupy its time with details which depend upon the evidence substantiating them for the impression they must necessarily make, but confine myself to such abstract notices as will impress, I trust, every important consideration it could not otherwise entertain.

In the compulsory discharge of my servants, or more appropriately speaking, in the breaking up of my establishment altogether, every description of pursuit in which a predial emigrant could engage was absolutely upset. Without labourers I could not till the land, or, in short, carry on any operations in farming wherein they are required. Apprehensions of Mr. Hart's hostility had long weakened me in this respect; still, in supplying bark to the tanners and fuel to the smiths, my own industry was not dormant; but in this crushing annihilation of all activity, by high authoritative order, so complete a ruin seemed denounced that every labourer shunned me like a pestilence! When at length it was manifest (by the relaxed measures of the sequestrator) that they *might* safely work for me, what was then their let or hindrance?—Mr. Hart, gentlemen! One ferruginous glance from Mr. Hart was sufficient to paralyse all the industry my bankrupt means had left; the anathema from the Somerset bailiff had the potency of a papal bull.

In this deplorable situation, equally the football between the oppression of the Government and Mr. Hart's subaltern, though more galling persecution, I thought it high time to bring the case to issue by the only course apparently left to me in this colony, especially as this course had been pretty broadly deciphered by the colonial secretary, in answer to repeated expostulations on the subject. I accordingly summoned Mr. Hart before the last Court of Assize, to which he had already cited me to appear for the cancelment of my lease, and to the proceedings of that Court I most earnestly entreat the attention of the worshipful body before me. Mr. Hart, grounding his action of ejectment on the publication of my name as insolvent in the Cape Gazette, was distinctly answered that his plea was inadmissible; that that proceeding was

in error, and that his action could not lie. His suit for the recovery of rent stated to be due was decided to be equally untenable, from the fact of my having also instituted proceedings against him, in which that question would to a certainty be merged; and his application for the title to the farm met with a positive refusal, on the ground of its being my absolute property during the period of my tenure; but what was the fate of my counter process? not at all of this character. The basis of my action was publicly declared to be good, and the Court only declined pronouncing upon its merits from the important omission of Mr. Van der Riet's name as a defendant, to whose irregular and inconsiderate conduct, the act of aggression I had brought before them was mainly to be ascribed. Such, gentlemen, was the decision of the able and enlightened bench who last sat here; such was the administrative justice dealt upon points at issue between the defendant and myself; comparatively as they are, trivial and unimportant to that mass of aggregated injury I have subsequently sustained.

After this equitable treatment, so novel to me at the Cape of Good Hope, I began to respire from the toil of struggling against such combined persecution; and to hope that Mr. Hart would foresee, in the consequences of this contest, sufficient inducement to the abatement of his *avowed* rancour, if not to his appetence for litigation altogether. I was not long suffered to indulge in *this* error. On the 11th of February, within a little four months, Mr. Hart renewed hostilities against me, as if alike averse to the pacific suggestions of the Commissioners of Circuit, as to any further contest with me front to front in Graham's Town, probably imagining that the retention of a *good* advocate, with a *good* sum of money, to back him, at a *good* round distance, was a better way of gaining a *good* cause, by a stern application of law only, than by a course which should subject its merits to a *viva voce* administration of pure unbought equity.

The 11th of February brought me an insinuation, but of a character so incomprehensible that I have preserved it most piously, for the abler elucidation of the Court.

On the 31st of March, I received a notice to appear in Cape Town.

On the 22d of April, Mr. Hart, Mr. Reteif and Mr. Fynn came to the farm, before I had quitted my bed, to ascertain what *damages* the farm had sustained during my occupancy (not as heretofore what improvements), and this, without any previous intimation to me, or show, at the time, of authority; nor should I have had any knowledge of the circumstance, but for the neighbourly kindness of Mr. Fynn, who called upon me late the over-night, to apprise me that it was meditated.

On the 7th of June, a messenger of the Court brought me a letter from Mr. Hart, which I refused to receive, with the expression of my astonishment that Mr. Hart could dare have the insolence to address a letter to me.

On the 9th, Mr. Hart went to the farm-house, and asked the people inhabiting it by whose authority they lived there.

On the 10th, a messenger of the Court read to me the request of Mr. Hart that I would yield up possession of the farm; to which I replied, that I should not even deign an answer to it; and that if I was to be further subjected to Mr. Hart's annoyances, I should apply to the local authorities for redress.

On the 16th, I received a letter from the clerk of the sequestrator, that the matters between Mr. Hart and myself were referred by the bench of justice in Cape Town to the ensuing justiciary commission here.

And finally, on the 24th, a very extraordinary communication from Mr. Van der Riet, which I shall also have occasion to lay before the Court.

In this rapid succession of annoyances, considering who Mr. Hart is, and who I am; allowing for the profound distinction between an obnoxious, half-crushed settler, and his Excellency's bailiff at the Somerset establishment; the difference of being out of the sun on the one hand, and highly in it on the other, —I *must* think the court will concede that I have at least experienced a good deal of vexation in all this unnecessary interpolation within the last year. Surely Mr. Hart should have been sufficiently regulated by the tone of the last

Court of Assize, or sufficiently informed by his well-paid advocate in Cape Town, that the matters in dispute between us could not by any possibility be reconciled, or conscientiously adjudicated, but in the neighbourhood of their local origin. Surely, I say, he should have sufficiently known this, so far at least to have made it manifest, that the line of conduct he has followed, if not an impolitic, was, at any events, a very invidious one; because its object *must* have been to inflict upon me intolerable expense, or an unjust judgment; he cannot advance any other motive in justification. Common sense must have told him that our Court could not consistently impugn the decree of another. And common prudence would have taught a much less able financier, that a monstrous deal of money may be unprofitably squandered even upon the right side of a law-suit.

Whatever may be the abstract merit of these facts, the Court is now in possession of them, a knowledge absolutely indispensable to its guidance in the important cause before it; and as, no doubt, Mr. Hart is prepared to support them as a legal, consistent, and essential train of consequences, growing out of the dispute between us, the Court must allow me, as *ex debito justitiæ*, to call its attention to my version of such a proceeding, and to deprecate its adopting the faintest shadow of a conclusion, from the extraordinary circumstance of Mr. Van der Riet's coadjutation, or the still more extraordinary one of Mr. Hart's having found another legal abettor to back him, long after Mr. Van der Riet had dropt him by the way, as a coal far too scorching for even the callosity of his fingers to retain. If judgment is to be given against me, because Mr. Hart can plead high sanction to his persecution, while I have advanced nothing in opposition to it but my own single-handed struggle, alone, stimulated as I have been by a hatred of tyranny and oppression;—if, gentlemen, I am to be defeated because some high functionary might be inculpated in the consequences of my triumph, I can only say, God help my cause and that of every unfortunate settler in the district; because known as we are to be a body—decried, despised, and discountenanced by this Government, it will be only necessary, in crushing any one of us, for some tool or placeman to pick a quarrel with his victim to bring down certain destruction upon him, according to law.

Now, to show that Mr. Hart's proceedings, separated from that support he has all along found in the Government, are illegal and cruelly oppressive, I beg the marked attention of the Court to this summary recapitulation. Admitting for a moment that they were formal up to the date of my sale being suspended, they could be so no longer; the Government from that hour had completely tied up my hands; I was defenceless and incapable, at the mercy of any coward who chose to assault me. Was it then for Mr. Hart, when bounden at his feet, to continue battering me with the cudgels of the law? Was it for the Government to countenance such inhumanity? And for what, gentlemen? because I would not become a party to the iniquitous endeavour to abrogate my lease of the farm, and thus commit an overt act of robbery and swindling upon my creditors. From this period, as the different acts I have recited must clearly establish, Mr. Hart has granted me no peace or respite—this day an insinuation, the next a slander; now a peremptory order to quit the farm in twenty-four hours, and now a personal trespass upon it, with appraisers at his heels! How, in the name of God, can Mr. Hart calculate on my capacity to pay him rent? How can he equitably expect it, when his own act has suspended all industry upon it, and rendered it to me as barren of return as the floor I am now treading upon? If Mr. Hart maintains that, prior to these violent proceedings, I had incurred its forfeiture, I deny the charge. If he again takes up the Cape Gazette, and points at that slander upon my credit—the advertisement of my insolvency—I call upon the Court to tell him, and if the Court declines so to do, I will tell him, without the slightest fear of its contradicting me, *that that advertisement is a foul libel upon my character, a proceeding* illegal and unwarrantable, and for the consequences of which I shall forthwith institute an action for the recovery of damages. I will tell him, moreover, that the Government knows this to be the case; that the grounds of its illegality are incontrovertible; and that my statement of this unparalleled act of oppression is already before both his Majesty's Government and the Commissioners of

Inquiry. If Mr. Hart founds his procedure on the non-payment of his rent, I rebut his title on two distinct grounds: first, according to competent and respectable authority, that his agreement gives him no power to exact it until the expiration of its period; this authority, gentlemen, is Mr. Le Sueur our secretary, and a notary public. But the second disqualification is infinitely of greater force; the landlord, in all countries, is expected to support and encourage his tenant, not to harass and torment him. What has been Mr. Hart's conduct?—from the first year of my tenure, from that period when the general calamity made our misfortunes a subject of universal commiseration—when my claims upon him as a landlord were rather for increased forbearance—when I was reproached by every one for my lavish expenditure upon his farm,—what support did Mr. Hart extend? he picked a quarrel with me for no other purpose in life but to pocket the fruits of my capital and industry, and seized the lucky moment of general embarrassment to make my ruin more complete and irretrievable! Will the Court permit such iniquity to triumph? Will the Government permit it? Merciless as it has hitherto been to me, I have no hesitation in saying, No.—These, gentlemen, are the bases of Mr. Hart's aggression. The one it is in your power instantly to dissipate, by telling him that he has nothing to hope from the publication in the Cape Gazette; and the other will assume features very different to his perception, if you tell him also that if he by his conduct absolutely disqualifies me from paying him rent, he has no right or title to demand it.

These propositions once admitted, it lies in the bosom of the Court to award me what it may conceive a just remuneration for such accumulated injury. The defendants must have acted legally or illegally; if legally, so prodigious a departure from all custom or precedent must prove to every one that some law has been enacted expressly to suit my case; in this event I have only to shift my battery: but if illegally, I have no doubt the Court will impress a salutary lesson, both upon Mr. Van der Riet and Mr. Hart, that the one cannot inflict injustice merely because he is sequestrator, nor the other because he happens to be bailiff at the Somerset farm.

You shall judge, gentlemen, in a further instance, what reliance is to be placed in his assurances. The form of your proceedings has extracted from Mr. Hart, that he stands before you uninfluenced by malice and revenge. For no motive in the world, but to save an old man and his family from destruction, I became security to Mr. Hart for the repayment of five thousand rix-dollars. This old man, was the late Captain Ellert, who represented that Hart would make him this advance upon my security, and that without it he must inevitably be ruined. I did so. Within a very few weeks Mr. Hart applied to me for the money, declaring solemnly that he advanced it to Ellert on my security alone. Will the Court believe that this money never was advanced in spite of this assurance, and that my generosity was made the cat's paw to cover an old debt? Will it believe that after this assurance I can show Mr. Hart's own admission to the contrary, and Major Somerset's positive assertion that Mr. Hart knew Ellert to be in a state of insolvency long before he suffered me to be so egregiously taken in? It may naturally be asked how I extricated myself from this dilemma? I will tell you, gentlemen, Mr. Hart did it for me. The fact is, Mr. Hart in a display of his epistolary talents launched into such a sea of discussion, where he so completely lost his reckoning, that he furnished me with matter of defence infinitely more than I had occasion for, and to the possession of that precious letter my safety is alone attributable.

However these causes may be determined by the Court, it is not possible that I can permit their consequences to cease here. I have been too cruelly persecuted to be satisfied with even the full amount of that redress I am soliciting at its hands; and as I have substantial reasons for believing that Mr. Hart is not single handed (or at any event single headed) in the commission of these wrongs, it becomes a duty, though a painful one, in my necessary attempts at development, to pursue a line of interrogation with the evidence, which, but for this explanation, the Court might deem vexatious and irrelevant; I can give no other reason for my motives in following this course, than that I conceive it indispensible to my success this day, as well as upon more important occasions hereafter. The questions I shall apply are without a spice of frivolity or

malice; and the end contemplated is wholly subservient to the purposes of justice. Possibly they may appear altogether foreign to the point at issue, but the Court must necessarily be restricted in its perceptions to the matter merely before it; while I give it this distinct assurance that there is much more in these proceedings than is apparent or avowed, it will, I trust, so far extend its forbearance as to await the end, whatever want of essential relation it may attach to the means.

Persecution, with all its degrading consequences, has not yet divested me of my proper pride. Let me ask in the fullness of it, *who* is this man who stalks about the district seeking whom he may rebuke or humble? Who is he? Who is this Mr. Hart, other than a man preferred through all the gradations of indigence to a calling which patronage has sanctified with his Majesty's commission? Who is he? retired as he is with the *otium cum dignitate!* from buffeting poor adventurers like himself, to all the ridiculous dignity of subaltern magistracy at Somerset. His Excellency's farm at Somerset! Is such a man with insolent impunity to set his force against the current intention of a nation! Is he to blast the fair prospects of industry and enterprise at pleasure, because he is my lord's understrapper? I trust, for the credit of your commission, gentlemen, you will think not; and that Mr. Robert Hart, although he can back his lawyer with thousands to pursue me to a jail, is still, in the estimation of dignified and proper feeling, but Mr. Robert Hart, Lord Charles Somerset's private agent at Somerset.

Unhappily embarked in this emigration, I have followed its stream to the limits of human fortitude. No one among the settlers has suffered so acutely as myself. Yet I call my God to witness, that all my losses, privations, and discomfitures, are trifles in my estimation when compared with the irreparable insult I have sustained from such a man. That I should ever have been brought into contact with him must be a subject of miserable retrospection, but that I should be subjected to the degradation I have so long endured is a feeling intolerably humiliating. I will swear to his calculation of support from the Government, or he would not have the audacity to stand the brunt of this day; he would not otherwise, brazened as he is in all the obliquities of jesuitical espoinage, dare to confront my honest ease with one steady look, practised as those looks are in a wily money-getting deception of his species. But the Court will tell him, that if integrity had guided his quarrel, there would be now no dispute between us; that any common friend might in an instant have appeased our ill blood; but that he having no pretension or title to the honourable caste by birth, rank, or education, can be nothing else in this colony but Mr. Robert Hart, his Excellency's bailiff at Somerset.

I shall not trouble you, gentlemen, with a single observation upon the puerile and ridiculous actions Mr. Hart has brought against me. I consign them to that fate the evidence must unquestionably mark out for them; and the result, I trust, will be your pointed reprehension, that an intention so palpable as that in which they have originated should be sought countenance for from you; manifest as that intention must be to involve the dispute between us in unnecessary complexity and expense. Nor shall I trespass further on your indulgence than to request—to entreat of you, the utmost limit of that patient consideration so characteristic of your calling. Your decision of this day must necessarily establish one of two facts: whether the recent strangers to your shores are a welcome auxiliary contribution to the physical strength of the colony, equally entitled with yourselves to the support and defence of the laws and the fostering solicitude of the Government; or whether the hopes which expatriated us, excited and encouraged as they were by our native country, are at length to prove a delusion upon the land which has hitherto so inhospitably treated us, under misfortunes calculated to awaken a different—very different feeling, and that we are to continue alike aliens to political countenance, and legal protection. In fine, gentlemen, whether, in bearing record of our rulers, we are to say, that rectitude, impartiality, and beneficence are the influencing principles of their conduct; or that, in cases in any shape referable to our condition, "*melius, pejus; prosit, obsit; nil vident, nisi quod lubent.*" (A true copy.) D. F. Bennange, *&c.*

*To His Excellency the Right Honourable General Lord Charles Somerset, Governor of the Cape of Good Hope, Commander of the Forces, &c.*

THE MEMORIAL OF BISHOP BURNETT,

*Respectfully sheweth;*

That the judicial conduct of causes in which your memorialist has been engaged before the last Commission of Circuit, and from the decisions upon which he has appealed, leaves him no alternative but to claim the high protection of your Excellency, if the safety of his property, his character, and his life, may be esteemed considerations worth struggling for.

Founding his proof alone upon the recorded proceedings of this commission in sundry actions brought before it by himself, and Robert Hart the bailiff, at the Somerset farm, your memorialist has no scruple whatever in accusing the members of that commission of *prejudice, partiality, and a corrupt violation of justice*, accusations he is resolved to lay forthwith before his Majesty's Commissioners of Inquiry and the Secretary of State for the Colonies.

That your memorialist, appellant in sundry causes to the High Court of Appeals,* solemnly protests to your Excellency, as the highest judicial authority, against the competency of any court of judicature to try the said causes of which Messrs. Truter and Borcherds are a component part; and that your memorialist will suffer judgment to pass against him by default in the event of such causes being proceeded with before any tribunal so constituted.

That an inquiry, upon the authority of the said members of justice, into an accusation of Charles Stone, a shopkeeper of this town, that your memorialist is a *fraudulent* bankrupt, prior to the legal establishment of such bankruptcy, and while the question, by their own reference to the full bench of justice at Cape Town, is still pending, is a manifest injustice and a wanton assassination of your memorialist's character, tending to prejudice the causes wherein he is appellant, and to forestal a corresponding judgment.

That the whole history of the law proceedings in which your memorialist has been engaged during his abode in this colony is one of flagrant injustice, of legal error and perversion, of inconsistency, of extra judicial procedure, of scandalous oppression, and of intolerable persecution.

That your memorialist, deducing from the premises, denounces the said members of the worshipful the Court of Justice, Messrs. Truter and Borcherds, as persons morally disqualified to fulfil the sacred functions intrusted to them, and prays—

That your Excellency will be pleased to order a revision of the proceedings before the bench of justice at Cape Town, with a view to an equitable decision upon the evidence already adduced, and your memorialist will ever pray, &c.

(Signed) B. BURNETT.

Graham's Town, 2d Dec. 1823.

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## MR. BURNETT'S SPEECH, IN REPLY TO THE ARGUMENTS OF THE FISCAL, UPON HIS TRIAL FOR LIBEL.

As I decline making any defence against the charges upon which I am arraigned, I shall occupy the attention of the Court no further than will be sufficient to account for this determination, and give a very brief reply to the argument of his Majesty's fiscal in aggravation of the offence.

The learned gentleman, as well as I can collect from the translator, enforces his claim with arguments derived from his favourite authority—the Roman laws; over which he glances his eagle eye, from Romulus to the extinction of the empire, in search of enactments wherewith to crush a persecuted settler, in a land unknown to the people whose judicial discipline he is so

* This is a mistake, although inserted in the memorial; as the appeal was from Commissioners to the full Court, and not to the High Court of Appeals.

anxious to introduce! It is very possible, that in looking over our own statute-book we may trace, in various acts of the legislature, a spirit strongly analogous to the modes of Chinese domination, and their very framers may admit that they constructed them from the doctrines of Confucius; but would that justify the King's attorney-general in ransacking the whole Chinese code for authority on which to convict a man he was prosecuting on a charge not cognizable by the laws of his own country? Assuredly not; and I maintain that his Majesty's fiscal is precisely aiming at this absurdity.

He states that time was before the march of civilization had made the disclosure of truth harsh and uncourtly, when a Tribune, a Prætor, or the Sovereign himself was accessible to the complaints of the subject, though couched in expressions of severe crimination and abuse; but that subsequent regulations rendered the same course of petitioning criminal. Debarred as I am from any access to his authorities, I have only a very distant recollection to rely upon; but this, I think, will warrant me in saying, that the fiscal is not justified in straining this circumstance to my prejudice, unless he could produce some specimen of what the Romans did and did not consider libellous, and thus establish by comparison the character of the memorial before the Court. It may, for aught he proves to the contrary, be as susceptible of the latter, as of the earlier construction.

It strikes me as a very necessary question to ask the fiscal, by what laws I am to be tried? Not by the English, for there he can find no authority whatever for this proceeding. Dutch law he tacitly admits has no existence, by the necessity he lays under of reviving the obsolete enactments of nearly two thousand years standing, upon no other sanction than his own caprice, and with no justification but his knowledge that provided he carries his point against me, no matter how, he is tolerably secure of impunity and approbation; but I will tell his Majesty's fiscal, that such a departure from the dictates of equity, of justice, and of common sense, is not to be tolerated; that he is bound to define the law by which I am to be tried, and that if he can find neither precedent or authority for this prosecution in the constitution of England or Holland, to one of which countries this colony *must* be tributary, he is no more entitled to rummage in the Roman code for grounds whereon to convict me, than he is in that of the Calmuc Tartars.

The constitution of one country is formed from the constitutions of others which have preceded it in the march of time. Wisdom rejects those ordinances which are bad, useless, and inapplicable, and adopts the salutary and the good; hence to Saxon, Norman, and Scandinavian legislation we owe the constitution of England, and to the celebrated Justinian code the Dutch are indebted for the basis of their own; but those adoptions are, in neither case, mere transcripts; they have all undergone modification. England is governed by laws, if not indigenous, at least naturalized, and so likewise is Holland; and in neither country would a public prosecutor be permitted to work the condemnation of a defendant by the application of some abstract principle or practice of other countries not formally adopted, solely on the ground that they *had* contributed to the constitution of his own! In other words, would the attorney-general of England be allowed to conduct a prosecution for libel according to the forms of Danish practice, merely because some of the laws of Denmark were amalgamated by Canute with the laws of England?

But if the fiscal is allowed this discursive range for the materials of his attack, I should be permitted to quote my Roman authority also, and tell him that by the laws of the Twelve Tables, the very elements and basis of the Latin constitution, deportation was *not* inflicted for libel. The only punishment awarded there for scandal, in all its ramifications, was a *good* cudgelling! Not that I reproach the learned gentleman for having preferred a claim of five years banishment, rather than a sound flogging; especially when, in his executive character, he might have been reduced to the difficulty of inflicting it. If, however, in the records of Roman jurisprudence he can find any authority for this claim of banishment, I ask him to produce it, and *then*, I shall resist its application to my case, until he clearly establishes its adoption, by the legislature of Holland, into the body of those laws by which the Netherlands are governed.

In looking over the Dutch commentator Van Lieuwen, I find very little on the subject of libel; from which it may be inferred, that corruption was less prevalent in his days, or that the truth was permitted to be spoken without entailing persecution. Nevertheless, he is sufficiently explicit as to the right of petition. He says, "If, through ignorance in a judge, or otherwise, an unjust sentence be pronounced, the judge will not be responsible for it; but those who think themselves aggrieved thereby will be obliged to avail themselves of an appeal, or the higher jurisdiction of another judge."

Is it possible, Gentlemen, to require a more lucid definition than this? If, no matter from what cause, an unjust sentence be pronounced, and for which iniquity the judge is in no respect responsible, (an exemption which enhances the right of the subject to petition tenfold,) the aggrieved party may avail himself of an appeal, or the higher jurisdiction of another judge; here is a discretionary course distinctly laid down, which course, thus prescribed by the laws, I scrupulously followed; I did appeal, but finding, in spite of numerous applications, that I could not obtain copies of the various trials in which I had been engaged, indispensable as they were to the conduct of such appeal, I exercised that discretion the law allows, and sought redress from "the higher jurisdiction of another judge." In what terms could it be expected I should address that judge? I had to complain of injury. It became necessary to set forth that injury. Seven actions had been tried by these Commissioners, thus said to be libelled, and each action contrary to evidence, to the facts adduced, to manifest equity and common justice, was decided against me! An eighth, wherein I was defendant, was of such palpable malice in its origin, and of absurdity in its complexion, that the Court was *compelled* to give sentence in my favour, but it nevertheless amerced me (the winner) in the costs! A ninth, in whose decision the whole of the foregoing would have been inevitably merged, and which it was clearly manifested to the Court should, with any regard to justice, take precedence of all the others, was wholly unheard, and referred to Cape Town; while the former eight, entirely originating in the merits, and dependent upon the issue of this ninth, were absolutely decided upon, as if that ninth had been tried and sentence pronounced against me. These proceedings throughout were also characterized by the most flagrant indecorum and partiality in these judges; every plan that could possibly oppose my chances of success was sedulously adopted; my opponent was allowed to be made the vehicle of personal insult, and a ruffian was permitted to brand me with epithets in open court, as unfounded as they were detestable. How, let me ask, could I characterize this flagitious aggression to his Excellency, but in terms adapted to it! Would it have become me, with a specific accusation to advance against these men, to have modified that accusation; thus approaching this higher jurisdiction with a lie? I maintain, and I am prepared to prove, that the whole tenor of their conduct in my particular case, *was* a corrupt violation of justice, morally disqualifying them for the discharge of those sacred functions with which they were so injudiciously intrusted. In what other language could I then express myself? I had to complain of injustice; how could I possibly effect this, but by stating that injustice? I had to complain of manifest corruption, of venality, of favouritism, and (that most execrable of its kind) judicial oppression, and I glory in having distinguished them by their proper appellations.

The Court will permit me to put a case to the learned fiscal hypothetically. Suppose I had detected either of these judges in the commission of murder, forgery, or any other offence against the laws, and I had denounced their guilt, like a good subject, to the Governor, would his Excellency have instituted a criminal prosecution against me before ascertaining the truth or falsehood of my charge? and if not, what becomes of the equity of his proceeding in this instance? The cases are here entirely parallel; not a shade of distinction indicates a different course for his adoption, unless the sable robe of justice is to sanctify enormity, and become the panoply of the foulest deeds under the created Heaven; and for doing that which self-preservation, conscience and respect for the laws required of me, I am threatened with five years banishment from the colony.

I am well aware that it has long been the practice at the Cape to try the colonists by Roman, Dutch, or English laws, indiscriminately, adapting this

caprice to the relative severity with which they may be applied to the respective cases; but as this preposterous system owes its existence to the toleration of the colonists, and not to the faintest shadow of a right in the judicial body who so arbitrarily exercise it, I have no hesitation in telling his Majesty's fiscal that this alone is a monstrous violation of justice, a perversion of delegated power, and an unwarrantable invasion of the subject's rights! We have it here on record, that the public prosecutor, despairing of a conviction upon Dutch or English statutes, or the bastard progeny of both,—the 'Cape Gazette' proclamations,—can only attempt to legalize the banishment of a British subject by the authority of a Roman pandect! We have it also on record, that causes are alike decided by the Roman Dutch, or purely Dutch laws; and I am prepared to furnish fifty cases within the limited range of my observation, that have been adjudged by 'Blackstone's Commentaries' alone! What shall be said of such a judicatory? To borrow the emphatic phrase of the first talented man in this colony, "It's all a hash!" a mere hodge-podge of inconsistency, folly and injustice, and will, I make no doubt, be so estimated by that august tribunal before which its victims must inevitably appear. There the local politics of a province will constitute no test of innocence or guilt, and the spirit which could resist oppression, or the patriotism which could unmask its motives, will be alike exempt from imputations of turbulence and disaffection!

I shall now proceed to show the learned fiscal that he is all along in error, and that the easy, happy, dignified fruition of his calling, is not to come into this Court (however officially pampered) to dole out his mercies or his maledictions at pleasure; and that the scales of life or death, so long his habitual poize in weighing the destiny of slaves or Hottentots, is not to be the balance to which a British gentleman is subject, whatever may be the specific gravity of a good cause crushed by oppression, or a bad one supported by patronage. In accounting to him for these opinions, I will give a much better authority than the Romans; to wit—the Parliamentary Reports of Great Britain; if this will not satisfy him, I will offer him the Common and Statute Law of the land, and, if then not convinced, I trust his appetence for unquestionable authority will be fully appeased when I refer him to the ministry of England. From either of these sources he will learn, that a British-born subject carries his constitution about him in every part of his Majesty's dominion as his indefeasable birth-right, and that in cases affecting his life, his liberty, or his fair fame, he is entitled to be adjudged by the laws of his own country. If such then is the fact, and I defy the learned gentleman to controvert it, I will very soon convince him that I have no more business to be arraigned at this bar on a charge of libel than Lord Charles Somerset himself.

Holt, a very courtier, in his 'Digest of the Laws on Libel,' says, "The plaintiff brought an action against the defendant for a libel, and declared, among other things, that he being vicar-general to the Bishop of Lincoln, the defendant had caused to be printed a petition to Parliament, charging him with divers crimes, as extortion, oppression, and corruption, in his office." "The defendant justified the publication, and insisted on the truth of the subject-matter of the petition." "The action was holden not to lie, the petition being the necessary and usual mode of complaint to Parliament for the redress of any grievance."—Lake *v.* King, 1 Saund. 121.

"Lord Mansfield recognized and approved the doctrine laid down in this case, in Astley *v.* Younge. So no matter which is stated in any memorial or petition against the conduct of magistrates or public officers shall be deemed libellous, provided it be done, *bonâ fide*, with a view of obtaining redress, and likewise that it be addressed in the proper channel by which such redress may be had; that is, to the persons who may be presumed to have power to give such redress."

Is it possible, gentlemen, to have a right more distinctly and satisfactorily laid down, and that as attaching to a nation beyond all others remarkable for its severity against libellers; and can any case be more in point than the one before you, with the contingence manifestly contemplated in this convincing definition! It is here evident, that with the most scrupulous and nice attention I have only followed the suggestions, or rather obeyed the dictates of the laws of my country, and that, so far from having acted illegally, or even vio-

lated propriety, by writing this memorial, it is his Excellency the Governor who has contemned the laws, by placing me unjustly at this bar, and neglecting to redress my wrongs, which in duty he is bound to do as the representative of my Sovereign.

Holt further says, "As when the defendant, being deputy-governor of Greenwich Hospital, compiled and wrote a large volume, of which he printed several copies, containing an account of the abuses of the hospital, and treating the characters of many of the officers of the hospital, (who were public officers,) and Lord Sandwich in particular, who was then first Lord of the Admiralty, with much asperity, he distributed the copies to the *governors of the hospital only*, but it did not appear that he had given a copy to any other person. On a rule for an information for this libel, Lord Mansfield observed, that the distribution of the copies to the persons only who were, from their situations, called on to redress their grievances, and had, from their situation, competent power to do it, was not a publication sufficient to make that a libel; and he seemed to think, that whether the paper were in manuscript or printed, under these circumstances, made no difference."—Rex *v.* Baillie.

"An action for libel could not be maintained for exhibiting a bill to the Queen, charging the plaintiff to have recovered 400*l.* of the defendant by perjury, forgery, and cozening; because, said the Court, 'the Queen is the fountain of justice, and all her subjects may lawfully resort to her to complain; but if they will divulge the contents to the disgrace of the person, it is actionable."—Hare *v.* Mellor.

"Therefore it has been resolved, that no false or scandalous matter contained in a petition to Parliament, though it charge a person with positive crimes, shall be deemed libellous."

If his Majesty's fiscal holds authorities like these inconclusive, it will be vain to adduce any other.

That I may be subject to no reproach hereafter, with having neglected any means of defence in a trial so important, so interesting as a precedent in future prosecutions of the kind, and probably so influential of my future fate in life, I shall record with the Court my reasons for declining to make any defence.

In illustrating the motives which led me to address the memorial to his Excellency it would be necessary to go into much detail. I should have to recount occurrences inculpating the conduct of this Government, to an extent that would stagger the public belief. I should have to expose a system of persecution, as remorseless and unpitying as it is odious and detestable, and virtually to attach imputations upon the Governor of this colony, his son, whom so many sacrifices have made commandant on the frontier, and the two worshipful gentlemen I am said to have libelled, to an extent that I am persuaded would be productive of fresh persecution, and measures of a nature so rigorous as effectually to hush my complaints for the future. As truth then is not permitted to be spoken is this colony, and as the proceedings of his Excellency, in this instance, is in effect proclaiming to the world that no injustice, however atrocious, is to be laid before him without subjecting the complainant to a prosecution for libel,—I shall not encounter the consequences anticipated by giving it publicity here. It will, however, be forwarded to his Majesty's Government, accompanied by very sufficient reasons for the course adopted, and will effectually show with what justice I have been arraigned here on a charge, which has no other origin than the vindictive hostility of his Excellency the Governor! For the truth of this assertion I appeal to the fiscal; and if, after so cheerfully replying to his interrogatories, he will answer one of mine—I would ask him whether he has not repeatedly declared, during the course of this prosecution, that had his advice been followed, it would long since have been abandoned, as wholly unwarranted by the laws?

Having combated the arguments of the learned fiscal, I think unanswerably, and having detailed my reasons for omitting my defence, it only remains for me to say, that not one word I have uttered upon this occasion is with a view of extenuating my conduct, or appealing to the lenity of the Court. On the contrary, my unqualified acquittal, or the full claim of the public prosecutor,

is what I entreat of you, gentlemen, to concede. If I merit any punishment, I merit that; and if you award less, you will confirm a too general belief, that the severe and arbitrary exactions of the fiscal have no authority in the laws, or that those laws are miserably disproportioned to the offences they profess to punish, in your humane reluctance to enforce them.

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## THE HISTORY OF MARIE JOSEPHINE FOCUS.

I was born in 1775, in the service of a farmer about thirty miles from Cape Town, my mother being the child of a Mozambique, by a Dutchman. My father was in the habit of visiting at my master's house, and when my mother was big with child he wished to have purchased my freedom from my master, but was prevented by an assurance that I should be brought up as one of the family, and never considered a slave.

When I was thirteen years of age my master died, and I was sold with the rest of his property: but one of his daughters buying me, I remained with her until I was twenty-five years of age, and had three children; at which time, she being indebted to Mr. Truter, myself and children were transferred to him in payment of the debt.

My new master was secretary to the Batavian Colonial Government, and I was employed as nurse in his family, which kept me constantly about the person of my mistress. I had only been about two years in this situation when the signal was made that there was an English fleet off the Cape, on which, whilst the whole colony was in great consternation, my master at that time living close to the treasury, in the castle, and being first civil officer of the Governor, immediately, with six slaves, set about removing a great number of boxes and bags of Spanish dollars from the treasury into his own apartments, and in the night, before the English were landed, distributed them in the houses of his friends.

When the English got possession of the castle, they got information of these things, and took all my master's slaves before the British General, who inquired if we knew aught of the specie. I replied, that if any one told him what we knew, our lives would be nothing but misery ever after; but that if the English would compel my master to sell me and my children to some person in the country, I would tell him all I knew. The General replied, that I and my children should not be sold, but made free, and always protected from my master by the English. I then told all I knew, and my master's house was strictly guarded by sentinels, and himself and family kept in custody until he restored all the money; and in a few days myself and all the slaves were told by an English officer to go to our master's house.

This at once opened my eyes to all the helpless misery of my lot, and in tears I told the officer what I should suffer; but he assured me my master had already an order not to ill-treat me, and that his own person should answer for it. As soon as I got into the house, my mistress, with a smile of vengeance, ordered me and another girl to take a large bag of dirty linen into the yard, and to wash and iron it before the next night; and although we had neither of us been accustomed to that work, and it was a week's employ for the regular laundress, we were obliged to do it in two days.

I was then locked up in the yard, and never allowed to go outside; and it was above a year before I was again permitted to do my own work, every day of which my master and mistress cruelly ill-treated me, so that my heart was nearly broken, and I began to wish it was ended. One night at the end of about the second year from my return, my mistress' children being unwell, she gave me, as they went to bed, a tea-pot full of cold tea for them to drink in the night, and on the next morning my master having asked for some tea before he got up, his lady ordered me to make it, pretending she had given me tea for that purpose the night before; I explained her mistake, when, with a terrible oath, she told me if I did not bring some tea immediately, she would flea me alive. In dread of her threat, as I had one penny in my pocket, I went to a small shop and bought a little black tea, but as that was of an inferior sort, the moment I carried it to him he threw the scalding tea

in my face. Smarting with this, when she got up she ordered my attendance at breakfast to bring three eggs, and, saying I had boiled them improperly, flew at me, tore the hair off my head, seized me by the throat, and most cruelly beat me. She then swore a dienar should take me to the tronk and flog me. The disgraceful idea of a prison made me desperate, and I then mustered courage to reply, that if I once went to prison, I would never return to her; and on her repeating the determination to send me, I said I will go alone, and went there directly.

About this time my master was appointed the office of fiscal, so he was superior over the prison, and the jailor was obliged to do all which he ordered.

I was flogged every second day of the first three months, so as the blood often, splashing from the repeated strokes, sprinkled my neck; and in this condition I was daily compelled to cleanse the privy of the prison, and carry the soil into the sea. As soon as that was performed, I was sent to the sea shore for the iron moorings of the boats, compelled to carry them to the prison, there I was busied all day in polishing them, and at night bore them on my shoulders to the boats.

The next three months was occupied in only sweeping the whole of the yards and rooms in the prison morning and evening, and all day working with my needle; but having at the end of this time the misfortune to make a chemise so as not to fit my young mistress, the jailor came to me with a whip —knocked me down, and flogged me most dreadfully in every part of my body; yet I had no more needle work from my mistress.

After this I began to have some enjoyment of my life. My master and mistress seemed either to have forgotten me, or relented in their barbarous conduct for several months; and as I was a sober industrious girl, and clever with my needle, the policemen gave me work to make and mend their clothes, so that I got some money to make me comfortable, and was very quiet. Yet I thought it was too good to last long. One day, about four o'clock, whilst I was standing at the door of the prison, a farmer came and said he had bought me, and I must go with him thirty days' journey into the country. I heard this release with more delight than I ever felt at any other time, and instantly went to his waggon at the corner of the Heiregracht; he put me to lead the fore oxen of the team, which being observed by Mr. Mathieson from his door, he inquired, "Has not that poor delicate creature suffered enough but she must do the work of a Hottentot man?" I replied, "God will bless your kindness, Sir, but, believe me, I am quite happy to do this, or any thing, to get away from my hard hearted master and mistress." My new master, who really was a very good man, said, with tears in his eyes, "I have just bought this woman from the fiscal and his wife, who ordered me to make her do this; but I shall take the poor girl into my waggon the moment I get out of town, and let the Hottentot lead the oxen; as I dare not disobey them whilst they are watching me."

When I got to the end of my journey, some time passed over my he very happily, but as my story was so well known and much talked of, it e to the knowledge of the benevolent Mr. Dashwood; who, learning the icu-lars, sent them to England; and the humane English Government ord me to be purchased and made free. I am now free, though my early sufferings have left me almost a cripple. I had children, all of whom, except two, were sold in different parts of the country. Of the two which remain with my old master, I have not been allowed to see one of them for above seven years, and the other assures me the hatred of the master against me pursues my unhappy children.

I had been taught in the family of my first master that bad men or bad actions never prospered, but I find reason to doubt this doctrine. My cruel master has advanced during the time of my sufferings through all the gradations of power and honour. He was, within three years of the robbery of the colonial treasury, appointed fiscal. He has since been appointed Chief Justice of this colony, and distinguished, through Lord Charles Somerset, with the honour of knighthood, and is his Excellency's most intimate friend. Besides this, he has been appointed, and now is, President of the Orphan

Chamber, a place of great trust and emolument. I am christened, and allowed to approach the altar of my Maker, whilst my heart is rent with the knowledge that my children are denied this blessing. They are obliged to follow their mistresses on each Sabbath, to carry her book and her footstool to the door of God's house, but when they arrive their load is taken from them, the door shut upon them, and they are bound to wait in the street until the service is concluded; when they bear back the proud mistresses stool and the blessed book, the record of our Lord's humbleness, ornamented with gaudy clasps and gilded edges.

Whilst I was enduring these sorrows at my master's house, I was not a solitary instance of suffering, through the kindness of himself and his lady.

One day the good man had mislaid his snuff-box, and not immediately recollecting where it was to be found, charged one of the slaves called Benjamin with the theft; the poor fellow said he knew nothing of it; so he was instantly sent to the tronk, where he was so inhumanly flogged (to make him confess) as to declare that he wished they would kill him, and in a few days he wasted to a skeleton. At the end of fourteen days his honour's snuff-box was found in the place where he had put it. The poor slave, Benjamin, was taken out of the tronk, and has never since been heard of by any of his companions.

His honour had also a slave called Spadille, a Malay, who was suspected of stealing some of his shirts, and sent to the tronk, where he was so often and so terribly flogged, as that he died in a very short time. To save appearances, my master had him put upon a board, with his face uppermost, and carried before the court of justice; and when he came before the accommodating judges and the jail surgeon (who was much under my master as the fiscal), they never turned him on his face to look at his back, but, declaring he had died a natural death, ordered him to be buried.

It is worthy of remark, that the Malays, being Mohammedans, are always delivered to the Iman when dead, to be buried according to the formula of their own religion; and perhaps Spadille is the only instance of a Malay slave being buried without the ritual in which they have so much faith and so anxious a desire. Yet poor Spadille was deprived of this ceremony, and his friends of the comfort. He was dragged by other slaves, not Malays, in the darkness of the night, and silently put into the ground, without any one being present to examine his back but those who were under the fiscal, and would not divulge the state in which they left him.

Where, I would ask, can be the justice of this world? My master, who was proved to have robbed the Government—who unjustly oppressed me, my children, Benjamin, and Spadille, perhaps to their death, has been fiscal, is judge, head over enormous funds, and an English knight, whilst I and my unoffending offspring were held in slavery and misery, from which they may never emerge.*

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### DECLARATION OF SIR RUFANE DONKIN TO MR. BURNETT.

Park Street, 9th September.

Sir Rufane Donkin's compliments to Mr. Burnett, and he has to acknowledge the favour of his note, which he found last night on his return from Hastings; and he encloses to Mr. Burnett an answer to his inquiry relative to an article in the Report of the Commissioners at the Cape.

Sir R. Donkin's absence from town prevented his receiving and answering Mr. Burnett's note sooner.

Park Street, Grosvenor Square, September 9, 1826.

In answer to Mr. B. Burnett's inquiry whether or no I can "confirm or contradict" the eighth paragraph of the Report of the Commissioners of In-

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* This statement was taken from Josephine's mouth by a notary public at Cape Town, and the *humane* and *honest* Sir John Truter is the same *independent* judge who first withdrew his name from the Literary Society on finding that Lord Charles set his face against it.

quiry at the Cape of Good Hope, which states, that "through the recommendation of the acting Governor, the superintendent of the Government farm at Somerset was induced to advance to him (Mr. B. Burnett) a certain quantity of stock, grain, &c. &c." I have to state, that I have no recollection of giving such an order in favour of Mr. B. Burnett particularly, although I think it very probable that I may have given such orders generally in behalf of any settlers who had capital, and, consequently, the probable means of repaying that farm; for, considering, as I did, the Somerset farm as having been established solely for the advantage of the public, and at the public expense, I should naturally turn to it as a source of aid in carrying into effect the colonization of Southern Africa, provided I could do so without injury to the friends of that farm.

(Signed) RUFANE DONKIN.

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## EPITAPH ON JUDGE RYENVELD.

[Written many years before I went to the Cape of Good Hope, by a resident at Cape Town; but which I am charged with composing by the fiscal, on the information of David Pasmore Taylor, notary public, who surreptitiously took a copy of it, and denounced me as its author, to buy his safety of the Government, within two days of my taking upon myself a heavy responsibility to save him from a criminal prosecution.]

HERE lies in death, who living always lied,
A base amalgam of deceit and pride;
A wily African of monstrous shape,
The mighty Quinibus Flestrin of the Cape.
Rogue, paramount ten thousand rogues among,
He rose, and shone like phosphorus from dung.
The wolf and fox their attributes combined
To form the odious features of his mind:
Where kennelled deep, by shame, by fear unawed,
Lurked rapine, villany, deceit, and fraud,
Hypocrisy, servility, and lust,
A petty tyrant, and a judge unjust.
Partial and stern in every cause he tried,
He judged like Pilate, and like Pilate died.
Urged to despair by crimes precluding hope,
He chose a bullet to avoid a rope.
Consistent knave! his life in cheating past,
He shot himself to cheat the law at last.
Acme of crimes, self-murder crowned the whole,
And gave to worms his corpse,—to fiends his soul.

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## IMPROMPTU, ON READING AN INFLATED ACCOUNT OF THE RIVERS IN SOUTH AFRICA.

WHILE floods unfathom'd o'er the globe abound,
Our Afric Rivers all are shallow found;
But here, each stream assumes an upstart flow,
From puddles—brooks, from brooks—what Rivers grow!
The Great Fish swells with Amazonian *pride*,
And Kowie rolls a Mississippi *tide*.
Delightful fancy! that can thus bewitch,
And pour a Ganges through a stagnant ditch;
Spread a vast lake where turbid vleys arise,
And give to wastes the bounties of the *skies*,
Bait a camp-kettle for a fry of fish,
And —— an irrigation at a wish.

PRINTED BY CHEESE, GORDON, AND CO.,
RED LION COURT, FLEET STREET.

# TWELVE LETTERS,

ETC.

LONDON:
PRINTED BY THOMAS DAVISON, WHITEFRIARS.

# TWELVE LETTERS

ADDRESSED TO THE

## RIGHT HON. THOMAS WALLACE, M. P.

CHAIRMAN OF THE COMMISSION OF REVENUE INQUIRY.

BY


## JAMES SEDGWICK, ESQ.

LATE CHAIRMAN OF THE BOARD OF STAMPS.


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La même force d'esprit qui nous conduit au vrai, nous rends bons citoyens.

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LONDON:

PRINTED FOR J. RIDGWAY, PICCADILLY; C. HUNTER, BELL-YARD, LINCOLN'S-INN; J. M. RICHARDSON, CORNHILL; AND OLIVER AND BOYD, EDINBURGH.

1826.

# LETTERS

FROM THE

## CHAIRMAN OF THE BOARD OF STAMPS,

TO THE

## RIGHT HON. THOMAS WALLACE.

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### LETTER I.

SIR,

In the 13th and 14th Reports of the Commission of Inquiry, of which you are Chairman, my name is made to receive a most marked and invidious distinction; I am even pursued with such a spirit of criminating research, that many who have read the Reports impartially, have been induced to suspect that there must be some latent grounds of hostility towards me *personally*. The materials are amply before me to show that this suspicion is borne out by the fact. I shall proceed to lay my testimony in proof of this before the public, and leave it to produce its own effect.

I will set out, not merely with admitting, but insisting, that every man who, clothed with the requisite authority, exerts himself faithfully and fearlessly in putting down abuses, and who sets the seal of reprobation upon those by whom such abuses are upheld, deserves well of his country, and entitles himself to the respect and applause of every

honest man. If, Sir, after the facts which I shall have adduced, you shall be found to deserve this honourable sanction as your reward, God forbid that I should attempt to withdraw one iota from your claim; and if, on my part, I shall justify my own humble pretensions, I trust, that in justice, I shall be allowed to put in for my share of the same equitable recompense.

After the reflections and insinuations against me, direct and indirect, with which you preface your Report, and which you give forth to the world as the condensed result of your inquiries, I hope I shall be forgiven, if I advert a little to my own merits. I am the last man who would willingly be the herald of his own deserving; it is what I never should have done from choice, but you have forced it upon me as a duty. I have ever felt reluctant in bringing my name before the public. I have no ambition that way. I have always hitherto contented myself with the conscientious and straight-forward discharge of my public duty, without seeking to proclaim either the labour of my exertions, or the result of them. It may seem extraordinary, that I should hold this language of self-approval to *you*—and this, too, in the very face of a Report emanating from yourself, extracts from which are circulating, through every public journal, to the uttermost corners of the kingdom—but I shall not come into court without my vouchers, and I pledge myself to verify them, or be content that they shall go for nothing. I

affirm then, that the whole of my official life, both as Chairman of the Excise Board in SCOTLAND, and, since then, as Chairman of the Board of Stamps in ENGLAND, has been more or less employed, first, in striving to put down abuses, and next, to bear up against the machinations which, to this day, have baffled all my efforts to remove them.

I had not been many months appointed to the Stamp Board in England, when the Lords of the Treasury, desirous of improving the Stamp Revenue in Scotland, appointed me, under their special warrant, to inquire into the system of management which prevailed in that part of the United Kingdom, and to report to their Lordships the result of my inquiries. Both Lord LIVERPOOL and Lord BEXLEY (then Chancellor of the Exchequer), in the interviews which I had with them, previous to my departure for Scotland, expressed their most earnest desire to enforce whatever measures should be necessary to rectify any abuses which might be found to prevail there; it is, therefore, quite superfluous for me to add,—when I speak of the counteraction by which my efforts to discharge the trust which the Lords of his Majesty's Treasury reposed in me were defeated,—that no part of that counteraction emanated from *them*. I speak with the exception of Lord GRANVILLE SOMERSET. I do not state this, Sir, for *your* information—*you well know* by what overruling influence I was, from first to last, opposed, and through whom all my efforts to remove

Mr. Bremner, the Solicitor of Stamps in Edinburgh—the chief agent in that shameless system of iniquity which I developed—were frustrated and brought to nought.

When I arrived at EDINBURGH, the condition in which I found the Stamp Department will appear from the following letters which I wrote at the time to my colleague, Mr. BINDLEY. I had kept no copies of these letters, which were penned on the spur of the occasion; nor would they ever have come again to my possession, but for the circumstance of his executors having, after his death, found them among his papers, and seeing their contents, very obligingly forwarded them to me. It is easily seen from the friendly, unofficial style of confidential intercourse in which they are written, that they never were intended for the public eye; they are, however, the basis of the Reports which I afterwards forwarded in official form to the Treasury; and I do not hesitate to call for the candid and sober judgment of the public upon them, as contrasted with the charge of official indifference to my public duty, which your Report takes so much and such incessant pains to fix upon me.

"Dumbreck's Hotel, March 11, 1818.

"MY DEAR MR. BINDLEY,

"I ought to have written long before this, and to have announced my safe arrival in this inhospitable climate, but I assure you, I have been so occupied from day to day as to leave me scarcely an hour's leisure. It is quite impossible to describe the state of disorder which the Stamp Department here exhibits. On my first arrival I proceeded to the Stamp

Office; it is situated at the end of a low dirty alley in the Old Town, and, from its appearance, has never felt the refreshment of soap and water since the Union. After paying my respects to the official tenants of this delectable mansion, I, after a time, sent for the key of the warerooms, and found the stock (amounting, I think, by their last returns, to upwards of *half a million* in value) lying in complete disorder on the floor and shelves, without a single label of any kind; no arrangement of the different class of stamps, but all seemed thrown together, like so many pippins and russetins, into an apple-garret. I found, upon inquiry, that there was no warehousekeeper; and that the whole lay at the mercy of the porter, who is sent (or one of the clerks, if he is absent) to fetch whatever supplies are, from time to time, required. I next inquired how often the Riding Inspector took the stock of the different distributors in Scotland, and I was informed that it was taken once in two years; the fact turned out to be, that Mr. Waddell, the inspector, enjoys a very lucrative office as Clerk in the Court of Session, and can only be spared for a few weeks once in a year in the summer vacation; that he consequently divides the kingdom into two circuits, north and south, and when this period of recreation arrives, he mounts his gig, and—wind and weather permitting—sets off in one or other of these directions, and receives from the different distributors their account of the stock in hand. Now it is very obvious, that as they know to a day when he will arrive, they may very easily, should they remit a few thousand pounds short, send up for the requisite amount of stamps from their agents to make that amount appear in stock, and afterwards return the supply. This, I have reason to suspect, is no uncommon practice.

"All this will require the Board's consideration; but I fear there are matters that will come before them of much greater moment in Mr. BREMNER's department, and which one cannot well advert to without considerable seriousness and anxiety. The fact is, I thought that the first and most re-

gular step would be, to take the stock (finding things in the state I have described), and I, therefore, spoke with the Excise Warehousekeeper, who has requested ten days' leave of absence, and with his son is employed in so doing from about ten till five every day. Finding no regular office for the deposit of inventories and copies of wills (which you know are required by the Act to be transmitted from the different commissaries to the Solicitor of Stamps at Edinburgh), I went up to Mr. Bremner to inquire where, and in what manner, they were kept; and he accordingly opened a closet or two in his office, in which they lay in dusty heaps, quite unarranged, and, in short, in a most shameful state of disorder. I immediately said, 'Mr. Bremner, this is really a sad mode of keeping documents of this kind, which are in the nature of public records, and which it may be necessary at distant intervals to refer to.' His answer was, 'Oh, I can very readily lay my hand upon any of them.' 'Why (I said), that may be; but suppose any accident were to happen to you, I am quite sure it would be impossible for any other person to lay their hand upon any thing; and, indeed, I very much doubt whether it could be very readily done even by *you*.' Recollecting that, among many other persons, Mr. Ramsay, of Barnton, who was a near neighbour of mine when in Edinburgh, had died worth immense property, I immediately said, 'Turn now, for instance, Mr. Bremner, to the will of Mr. Ramsay, of Barnton, who, you may remember, died about six years ago; and was reported, I recollect, to have died worth half a million of money.' He instantly hesitated, and looked very much confused. After a few moments' consideration, he said, — 'There has not been any inventory yet delivered in of Mr. Ramsay's property; there was some mistake about the stamp, or something. I believe he got out a *wrong* stamp; but I have written frequently to Mr. Gibson, the executor, to lodge an inventory; in fact, I wrote to him but yesterday.' 'Well, but, Mr. Bremner (I said), I wish you to explain this a little more

distinctly; for it really appears to me a very extraordinary circumstance, that an interval of six years should have elapsed, and not only no legacy duty be paid (when to my knowledge he left his daughters, and I believe there are nine of them, ten thousand pounds each), but not even an inventory lodged.' He said, 'he really could not tell why it was not done, but at any rate Mr. Gibson had got the stamp, so that *that* was paid for.' Finding that he gave equivocating answers to every question I put to him about the changing the stamp, I sent for Mr. PENDER, the Comptroller. When I began to inquire from him, he requested a little time to look into his books, affecting not to know exactly whether the stamp first obtained was changed for another of greater or less amount. At last, the fact turned out to be this—Mr. James Gibson, the executor to Mr. Ramsay, first obtained an inventory stamp for £2700 (this person was the Solicitor of Stamps during the short administration of Mr. Fox, Mr. Bremner being his deputy). This stamp he kept by him for some time; and after a conference with Mr. Bremner, it was returned to the Board, as having been taken out under too high an estimate, and a stamp for £1950 was obtained in lieu of it; and of course, I suppose, the sum of £750 was returned. A long period has elapsed since this stamp was procured, and yet no inventory has been lodged, nor legacy duty paid, nor do I think it was ever intended to pay any; and I suspect the £750 to have been fraudulently obtained, as one who had been a Solicitor of Stamps was not likely to have so overrated the value of the property. It will be necessary to probe the affair to the bottom. Mr. Campbell will be able to ascertain the periods when the stamps were respectively procured.

"This letter is rather prolix, but I have written in haste, and must make the same apology as the parson did for a long sermon—that he had no time to make it shorter. I hope all are well at the Board. If you have a spare moment, I shall be very happy to have a line from you. Farewell.

"Believe me most faithfully yours,

"J. SEDGWICK."

"Dumbreck's Hotel, March 30, 1818.

"MY DEAR MR. BINDLEY,

"I had just taken up my pen with the intention of forwarding some further detail of my Northern Expedition, when your letter arrived. In attempting something like a passage through this dead sea of iniquity, I have, certainly, no hope of coming close to the pole; at present, I think, as far as I can take my observations with any correctness, I am at the meridian; but the mass of corruption is so solid and compact, drifting together, as it has been, for this last half century, that there is no hope of its breaking away in fragments, like the polar ice, so as to open a way through it. However, we must do as well as we can. You ask if I think they had any intimation of my coming. I do not think I came upon them quite unexpectedly, as the Lord Advocate, whom I had seen in London about a fortnight before, had given intimation of it; but it was a useless warning, for they were not in a condition to avail themselves of it: had things been in any tolerable order beforehand, they might have bestirred themselves a little, and have had oil in their lamps; but even this preparation would have been useless, for they had no lamps. When, for instance, I wanted to refer to the inventories of two or three persons, I desired Mr. Bremner to turn to his *General Index Book*, which he did with great solemnity: *Mr. Forbes* and *Mr. Ramsay* were the names I wanted; but as he did not seem to turn to them very readily, I desired he would hand me over the book; upon which he was obliged to confess, *they hadn't got so far as letter R.* I then took up the book, a *fine ponderous folio*, to see how far they *had* got, when I found they had got as far as *letter A*, under which *twelve names* were entered. The fact was, there never had been an Index Book kept in the office, and the present had been introduced *the day before*, for the first time; the confusion and irregularity, therefore, which prevailed up to this date, you may easily imagine.

"With regard to the *plate licence duty*, which you advert

to, being apparently very ill collected, I proceeded, on the receipt of your letter, to make some inquiry into this. Thinking it always best to begin at the beginning, I sent for Mr. Waddell, our Inspector, and desired he would request the Goldsmiths' Company to fix a day, when I would attend during the process of assaying and marking the plate, which I did on Thursday last. I found every thing conducted with extreme exactness, and an anxiety to give every information.

"The senior members of the Corporation, together with the Warden and Assay Officers, were present; a person of the name of Scott, employed by Mr. Bremner, brings the *punch* with him (the instrument with which the mark is impressed on the different articles of plate brought to be stamped), and takes it away with him when the marking is done, keeping it, in the meantime, in his custody, or in Mr. Bremner's, till the next assay day. Of this circumstance the corporation very grievously complained, and they explained the origin of it, which was this:—It seems that, many years ago, a member of the Corporation, of very unprincipled character, privately affixed the mark to different articles of plate, without accounting for the duty; this was detected by the Warden, and the Corporation instantly sent notice of the transaction to the Stamp Office; the offender immediately fled the kingdom. Mr. Bremner forthwith took the instrument of impress from the Corporation, and either keeps it in his own possession or Mr. Scott's, the person he appointed to attend with it, and who has ever since attended with it, as above described. Now, as the most respectable persons, and of the most tried integrity, compose this Corporation, it is very natural that they should feel indignant at the public and perpetual reflection upon them which this deprivation conveys, and that they should be most anxious to have this stigma removed. I told them therefore, when they urged the subject, that I was quite sure that it was not the wish of the Board of Stamps to adopt or to sanction any measure of precaution, which in itself implied a distrust of the integrity of the Goldsmiths' Company as a body,

and that they would very readily discontinue that measure in particular which was felt by them to convey that imputation. I undertook to say thus much, because, in the first place, I most conscientiously thought, that in justice they deserved it; and in the next place (which it was not necessary to tell them), because I apprehended the measure itself to be nothing more or less than an illegal, unauthorised act on the part of Mr. Bremner, which is made subservient to his own speculations of private profit. I think it quite clear, that the taking this instrument of office out of the hands of the Corporation into his own private custody is not within the legal authority of any individual; and my only wonder is, that the Company submitted to it at all, much more for so long a period. Then, so far from being a security to the revenue, it is quite the reverse; for it is enacted by the Act (stat. 24 Geo. III. c. 53), that, 'in *default of receiving* the duty, the respective Companies, or Assay-officers, *shall be accountable for the said duty*, as if *actually received*.' Now, if this Mr. Scott were to connive with any individual of the Company, and were secretly to furnish him with the *punch*, it is quite clear that the Company and Assay-officers would stand relieved from the responsibility to which they are here subjected, by this special interference of an officer acting, as they would urge, under the Board's authority, whose acts they had no power to control. If, moreover, an individual of a Corporation, with the check of the Warden, and under the eye of the Assay-officers, may fraudulently use this instrument in marking plate, what shall prevent an *individual out of a Corporation*, with this instrument in his *private possession* at all hours, and with no check of any kind, from making the same improper use of it?

"Then, as to the cost of this preventive, I suppose Mr. Bremner may pay the man he thus employs about ten shillings a-week (he is in attendance about *an hour and a half* three days in the week; Mr. Bremner never yet was present himself); and in *one item* of an account which he showed me of some charges incurred, when in London some time since,

was TWELVE HUNDRED POUNDS, for this *duty of superintendance at Goldsmiths' Hall,* to secure the plate duty. So that he means *to punch* the Board out of this, at any rate, let what will become of the instrument. When he spoke to me about this charge and the allowance of it, it was before I had made the present inquiry; and I, of course, told him, that as the transaction out of which it arose occurred before I came to the Board, I could give no opinion whatever upon it.

" Now as to the present state of the plate duty in Scotland, one should naturally have thought that one who had taken so strong a measure to secure it at head-quarters, would at least have been sufficiently vigilant in the subordinate districts. But I learned, at Goldsmiths' Hall, that very little plate was stampt but what was manufactured at Edinburgh, and that it was the common practice in all the northern towns in Scotland to sell it below the standard, and without the legal mark. I inquired of Mr. Waddell, the inspector, how all this could happen, who told me that he had purchased plate of this description at Perth and Aberdeen, for the purpose of prosecuting the venders; but ' that *Mr. Bremner* was of opinion that the law, as it stands, would not reach them; and the plate so purchased, in 1815, lies still at the Stamp Office.' Upon this, onward I went to the Stamp Office; after looking into the Act, and enquiring from Mr. Bremner if this statement was correct, he said, ' Yes, it is.' I told him ' I had been looking into the Act, and that it seemed to me to be quite sufficient for prosecuting any of these frauds,' and I then requested he would point out where, in his opinion, the defect lay; upon this he turned to the following clause of the 24 Geo. III. c. 53, s. 8. ' No goldsmith, silversmith, or other person, dealing in gold or silver wares, shall expose to sale any gold or silver wares, or manufacture of gold or silver, made after the said day (1st December, 1784), or export the same out of Great Britain, until the same (being of the standard directed by law) shall be marked with the King's head, besides all other marks directed by law, on penalty of £50; and for default, &c.'

" It would be difficult to guess how any man could puzzle himself into a doubt on the sufficiency of this clause for the purpose of prosecution; however Mr. Bremner's doubt arose on the *parenthesis*—his legal reading of it was this: 'the silver must be brought to be marked, and it cannot be exposed to sale without being marked;' but then it says, 'being of the *standard directed* by law;' and their silver is *not* of the *standard*, and, therefore, they don't bring it to be marked, and I don't see how we can prosecute them.

" The Board will be as much surprised as I was at hearing so grossly stupid a construction of the law from a *Solicitor of Stamps*. I need not detail any of the discussion which passed upon the subject; it ended in his acknowledging that very likely we might succeed in prosecuting; that it was not too late to prosecute the venders of that unstamped plate, which was in the office (bought in 1815); and that he should proceed against them *immediately*. It turned out, in the course of my inquiry on this subject, that he had never even taken the Lord Advocate's opinion with regard to the *doubt* he entertained on this clause of the Plate Duty Act, nor *instituted a single prosecution* by way of trying the point, during the *thirty-four* years which have passed since its enactment; but suffered the plate seized by the Inspector as being *below the standard*, and unstamped, to be locked up in his office, and *the offenders in all parts of Scotland* to defraud the revenue and evade the law *during all that period*, without check or control. This statement, I think, will sufficiently account for the *deficiency of the plate duty*.

" I don't recollect whether I mentioned that I had been to our distributor's at Glasgow. I found every thing there kept in great order, except the books of account, books of inventory, &c., all which were in sad confusion; they have now procured a new set of books, and the whole will in future be kept under proper alphabetic entry and index of reference, and brought into regular official arrangement.

" I shall write again soon; but I am so incessantly oc-

cupied, and so much fatigued, that I need plead no other apology for the interval that may pass between my letters.

" With best wishes to the Board,

" Believe me, my dear Sir, yours faithfully,

" JAMES SEDGWICK.

" J. Bindley, Esq."

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" Dumbreck's Hotel, 24th April, 1818.

" MY DEAR MR. BINDLEY,

" I am extremely obliged by your communication of this morning; and the more so, because I know a letter of four sides to be the product of no slight exertion to both your hands and your eyes, which, however, though you say, they ' have had their best days,' do certainly bear no very decided testimony to the truth of your assertion.

" I am glad to hear that our last remittance improved upon its predecessors. I declare to Heaven it astonishes me, when I see the fraud, irregularity, and connivance which prevail in every thing connected with the Stamp Revenue here, how our remittances have reached the amount they have even hitherto arrived at. The following *Memoranda* will, I think, impress the Board with the same feeling on this point.

" MANDATES, STAMP, 5s.

" These are what we term in England *warrants to prosecute,* and *warrants to defend.*

" This would, of course, produce 10s. to the Revenue on every cause above 40s. The officers of the different courts make no hesitation in receiving them without a stamp; and I am confidentially informed by two or three of the most respectable Writers in Edinburgh, that they are not stamped in *one case* out of a *hundred;* taking the whole of Scotland, as in Aberdeen, Perth, Dumfries, Glasgow, and other places, they are almost wholly evaded, *though charged to the client,* as by law is *authorised.* On this head of fraud there is neither

check nor control. The Inspector occasionally makes a report of certain offenders to the solicitor, but *no prosecution ever ensues.*

"BILLS OF LADING, 3s.

"These are *very rarely* used on stamps (*scarcely ever*), though it certainly ought to be a very productive source of revenue.

"ATTORNEYS' CERTIFICATES, 25l.

"I found very early after my arrival here, that these were evaded to a great extent. The mode, or rather the pretence under which it is evaded, I have explained on the document itself herewith enclosed, which I obtained, that I might fully understand the process in detail. I knew this system of evasion to have been long within the knowledge of Mr. Bremner, and I spoke to him very strongly on the subject. His answer was, 'that it had always been a disputed point here, as to whether it was payable, and upon *what instrument,* and whether the entry of admission was liable; and, indeed, it was *the very subject* upon which he *was preparing a case for the opinion of the Lord Advocate,* and which he wished to get before him, before he went to London.' Accordingly, as you will see by the inclosed note, I received some days afterwards *a copy of the case, fifty-six pages* in length (which I shall send up *by this Mail,* with other papers, to the Board). There is no opening for any doubt on the point; but the fact is, as you will easily perceive, Mr. Bremner had no excuse for having so long *acquiesced in the fraud,* but that of having been *perplexed by the difficulty for twenty years,* which, in plain truth, he never felt, nor could feel, even for a moment. Judging by the length of the case, and the twenty guineas of fee therewith to the advocate, you would suppose it involved a point of very complicated nicety. I took the pains to go through with it, and, to be sure, never was nothingness better concealed by prolixit ; it begins with '*the act of William and Mary,*' which

has as much to do with the matter as any *act of Thomas and Sally*, and it travels through all the statutes, seemingly from that date downwards; however, as it will be before you soon, I need say no more upon the contents of it.

" APPRAISEMENTS.

" These instruments are seldom stamped in the northern part of Scotland, and are much evaded even in Edinburgh, and the larger towns in the west.

" LEASES.

" The Stamp Duty on Leases is very generally evaded throughout all this part of the kingdom. The contract is thus managed: for instance, the Duke of Gordon, for one, never uses any stamped instrument in granting a lease to any of his tenantry, but his *factor* enters the name of the tenant, the *term* of *the tack* (as they call it here), and the rent to be paid, in the rental book, and I am told (which, of course, gives currency as well as confirmation to this species of fraud) that the Court of Session and House of Peers have, by their judgment, affirmed *tacks* thus verified, when *followed by possession*, to be to all intents *valid* and *effectual*. I should like to be able to get at some record of this decision—if its consequences are not counteracted by some positive statute, we shall in vain expect any revenue from this source.

" PLATE DUTY.

" The deficiency under this head of duty I had occasion to explain in a former letter.

" CARDS.

" *Duty paid cards* are seldom used out of Edinburgh, and not much used in it, except among the higher circles, and at the club-houses. My attention was first called to this by Mr. M'Kenzie, a supervisor of excise here, who, being known to me, had called, with the hope, as he expressed it, that he

might now be able to obtain something, as his share of the penalty, on some seizures of cards made some years ago. He had deposited them with Mr. Bremner, in a large trunk, *of which he gave me the key,* together with the annexed note of particulars. When I first spoke with Mr. Bremner, he was of course not aware of the extent of my information, and he affected to have almost forgotten the circumstance. 'He *believed* there were some seizures some years ago, and if he recollected right, they were lodged *in the Excise Office.*' I told him I understood they were lodged in the Stamp Office, and that I was, besides, quite sure they would never have been received into the excise warehouse, not being an exciseable article. When I showed him the key of the trunk containing them, he then remembered they were in a closet below. I inquired whether the parties had been prosecuted? he said '*the Magistrate wouldn't give any penalties*—he didn't know why, but it was, he believed, because they were *second-hand cards.*' I said, 'if they are, I suppose they were seized for being sold without the wrapper;' '*perhaps it might be* so—he really couldn't tell.' I proceeded below to take a look at them; the instant I looked at the *ace,* I saw they were *not* second-hand cards; and not suspecting at first that he had told me a falsehood, I said 'M'Farlane was the magistrate *at that time,* and I will go to him immediately, for I know him very well, and ask him on what ground it was that he refused to condemn these cards, and give judgment for the penalties.' Upon this he said, he didn't know who was the magistrate, *for he didn't prosecute, as he didn't think he could succeed.*' I was really so much disgusted with this gross neglect of duty, as well as by the stupid prevarication under which he attempted to shelter it, that with the pack of cards in my hand I went away. Cards which have the words '*for exportation*' on the *ace,* and which I suppose have been fraudulently relanded, but which have never paid duty, are in very common use, and may be got in Glasgow and other places with very little difficulty.

" Combining all these with the extensive and gross evasion of the *Legacy and Probate Duties* (of which I shall shortly forward some curious specimens), I think the Board will be as much disposed as I am to wonder how we get what we do, and to be thankful for small mercies.

" I learn that Mr. Bremner is in a sad fright; he is very busy in all revenue quarters; for I was privately informed this morning, by a friend of the person appointed to survey them, that the houses and property of three persons, viz. Mark Watts, tobacconist; Thomas Todd, tanner; and Bailie Spottiswood, *are at this moment* under survey and appraisement, *by order from the Stamp-office; for what purpose he couldn't tell;* the former has been dead twenty years, the two latter about fifteen; I suppose there will turn out to be property, upon which no inventory has *yet* been given, nor any legacy duty paid; however, it shows at any rate that they are preparing for some cases that may chance to be hit upon. I suspect I shall surprise Mr. Bremner, when I come suddenly to revive the memory of these *three Worthies;* but there is such a host of them, that I really don't know hardly in what order to call them up. I think I do not at all over-estimate the amount, when I say that, in my opinion, in duty and penalties, there is not less THAN HALF A MILLION CLEARLY RECOVERABLE. There is much to be done, undoubtedly, and much labour to be gone through, before it can be got at; but I am quite sure it may be accomplished. Independently of this, were the present abuses corrected, and an efficient system established, under which the *Stamp Revenue* might be fairly and fully collected, I am satisfied it would exceed its present amount by a *hundred thousand a-year.*

" My fingers are getting stiff, and my head stupid, and it wants but ten minutes to one; all which circumstances seem to intimate that I should retire to bed,—so good night, and with best remembrance to the Board, believe me,

" My dear Sir, most faithfully yours,

" JAMES SEDGWICK.

" P. S. Tuesday morning,—I have this morning sent up by the mail a drawing, which will give the Board a distinct view of Dumbreck's hotel, and its situation, as it respects the Excise office; you will see the advantage of thus consolidating, by this purchase, the property of Government. It might, perhaps, be as well to show this to Mr. Vansittart or Mr. Harrison. I shall write to the Treasury on the subject by this post.

" I thought, after finishing my letter, that it would perhaps be best that my letter to the Treasury should go through the Board, as the plan might be shown to them by whoever went to them upon the subject. The Provost and Council here are using their influence with Mr. William Dundas, to procure a Stamp Office to be built, and a *personal interview* between some members of the Board and Mr. Harrison will best counteract all this under-plot. It is desirable to get the purchase adjusted as early as possible.

" Dumbreck's hotel is to the left of the drawing, the Excise Office in the centre, and the British Linen Company Bank on the right. I thought it best to have a view taken that gave two sides of the hotel.—Excuse this, for the postman is waiting.

" J. S."

I shall take an early opportunity of publishing my further Correspondence with Mr. Bindley, together with several of his letters in reply, which I find preserved among my papers; I am unwilling at present to extend this letter, lest I should intrude beyond the space which can conveniently be spared by a daily journal. What has here appeared is but introductory to the infinitely more important documents which I shall speedily lay before the public, and which will

abundantly repel the aspersions which your Report has cast upon me. But I reserve the production of these till I come to address Lord MELVILLE HIMSELF.

But there is one subject to which I feel it incumbent upon me to advert before I conclude this letter—the charge of corrupt collusion, which you have endeavoured to fasten upon me, with regard to a fraud, which you aver to have been practised upon the Revenue by the County Fire Office, of which, for the time being, I chance to be one of the Directors. As you have given your Report to the public, without the Appendix which contains *the evidence* (a circumstance not a little remarkable), I have no means of examining it. When the Appendix appears, I will dissect the whole, and I will do it thoroughly and openly. As to the charge itself, I repel it with disdain. I use no measured language—the occasion is not suited to it. If I take the pains to sift it—which I shall do—it will not be to exculpate myself, for I have no need of exculpation, but to enable the public to decide upon its origin and its object; but for that, I would cast it from me with the indignation inspired by my contempt for it.

I subscribe myself, Sir,

Your most obedient Servant,

JAMES SEDGWICK.

Stamp-Office,
Somerset-House, Sept. 8th, 1826.

## LETTER II.

SIR,

If I resume my pen thus early, it is because the nature of the attack upon my official character contained in your Parliamentary Reports makes it dangerous, as well as imprudent, that I should sleep upon my shield. I come before the tribunal of public opinion to plead in arrest of judgment. I am my own advocate. The office is one of great delicacy, but I have no want of materials; my proofs lie on every side of me; and the only pain I feel arises from the necessity of producing them.

The manifest result of your Report is to induce Parliament and the Country to believe that I am unworthy a situation which I inadequately fill, and the duties of which I have unfaithfully discharged. *My* intent and purpose is, to repel this imputation by direct and decisive evidence, and to show that my conduct, as Chairman of the Stamp Board, has been the reverse of that which, upon the face of your Report, it is made to appear. With reference to the contents of my letter to you of Saturday last, I shall now go on to show, and to prove, that I employed myself in combating, under every discouragement, that system of fraud and abuse in Scotland, which, had it existed *here*, the Stamp Revenue must have inevitably sunk under it, and that by that very same influence

which rendered all my efforts to reform those abuses abortive, they are upheld to this hour. I speak, of course, with the exception of the Legacy Department, which was taken from the hands of Mr. Bremner, and a new officer created in the person of the present Solicitor.

" Dumbreck's Hotel.

" MY DEAR MR. BINDLEY,

" I sent off a long letter to the Treasury by yesterday's post. Mr. Bremner and Mr. Pender are in perpetual consultation; in fact, the whole office, from the Head Distributor downwards, Clerks included, act in concert; this is not to be wondered at, for the heads of each office I find to be connected by blood, or marriage. How their appointments have been brought about I don't know, but they seem, as far as I can learn, to be all birds of the same nest. I have been looking over the Reports of Waddell, the Riding Inspector; he appears to be an honest man, and to have sent a faithful account of the frauds he discovered from time to time, to Mr. Bremner, in his different journeyings, but the latter treats them as waste paper, and poor Waddell complains bitterly of his neglect. To defraud the Revenue passes for a slight offence with the most scrupulous of our brethren on this side the Tweed, and they have been so long suffered to evade the duties with impunity, that I almost despair of bringing them round again.

" As to the purchase of a Stamp Office, it no sooner got wind that I was commissioned by the Treasury to make such a purchase, than Sir John Marjoribanks, who has made lately a speculation by buying a plot of ground at the end of Princes-street, and who, I understand, has already got a contract with Government to build the New Post Office upon it, is eager to have a Stamp Office built there also, though building is, with us, quite out of the question; but I find all the borough influence is at work, as you will perceive from the following de-

tail: Sir W. Cunningham applied to me, offering to part with his house in Queen-street, which he seems very desirous to dispose of. I went, at his earnest desire, to look at it, and it appeared to me that it might serve very well for the purpose, but I found that Lord Duncan and his family, who resided in it, had taken it ready furnished for *four years*, subject to receiving a *notice to quit*, if, within that period, the house should *be sold*. They have resided in it two years, and it seemed to me that it would be incorrect, under these circumstances, to enter into any contract for the purchase, however eligible, without first communicating with the party in possession, and giving them the refusal of the *purchase* at the price it was offered to me; I therefore wrote the following letter to Lord Duncan:—

"'Dumbreck's Hotel, Thursday Morning.

"'MY LORD,

"'I really feel considerable difficulty in opening any negotiation with Sir W. Cunningham, on the subject of his house in Queen-street, inasmuch as it may possibly subject Lady Duncan and yourself to an inconvenience, of which I should be very unwillingly the occasion. To treat for the purchase of a house in which a family is permanently resident, even though such residence may, under certain circumstances, be liable to discontinuance, has so much the air of a transaction that would not, perhaps, be warranted by the ordinary rules of courtesy in private life, that I owe an apology to your Lordship for meditating such a treaty. I have, however, not yet made any specific offer to Sir William Cunningham; and before I proceed to do so, I should be glad to have some personal communication with your Lordship on the subject, in order that your accommodation may, as much as possible, regulate the terms that may be previously entered into, in the event of any purchase on the part of Government being concluded.

"'I have the honour to be, my Lord,

"'Your Lordship's most obedient servant,

"'JAMES SEDGWICK.'

"I was aware that Sir John Marjoribanks was setting every wheel at work; and the rumour that I was about to conclude a *treaty* with Sir W. Conyngham has put his auxiliaries *here* on the *alert*, as you will perceive from the following authoritative note received since my last, which no doubt was intended to set the affair at rest:

"'The LORD PROVOST presents compliments to Mr. Sedgwick—he has just learned that a treaty is on foot to remove the Stamp Office to Queen-street. If this information be correct, he conceives it to be a very inconvenient situation, and will, therefore, feel it his duty to oppose it.

"'City Chambers, April 10.'

"This curious note came without even the formality of an envelope, and without any official seal, and, in short, wholly unadorned by the dignity of office. Unwilling to keep his Lordship in suspense as to the effect which his magisterial intimation had produced, I instantly took up my pen, and forwarded the following in reply:—

"'Mr. Sedgwick presents his compliments to the LORD PROVOST, and is somewhat surprised at the unceremonial conciseness of the note which he has the honour to receive from him on the subject of a treaty which he has been informed is on foot for the removal of the Stamp Office to Queen-street. Mr. Sedgwick has only to say in reply, that he is extremely indifferent to any opposition which his Lordship may feel it his duty to exert on the occasion; but should the treaty adverted to not be concluded—which Mr. Sedgwick thinks is very possible—he begs his Lordship will ascribe such an event only to the Board of Stamps finding better accommodation elsewhere, and not to any obstacle created by his Lordship's interference.

"'Dumbreck's Hotel, April 10, 1818.'

"About ten o'clock in the evening, came the following, in an envelope, and with the seal of the City Arms, that no official importance might be wanting:—

"'The LORD PROVOST presents compliments to Mr. Sedgwick, and regrets that the conciseness of the card he had the honour to address him should have been considered unceremonial; if it has created to him the smallest uneasiness, such, he does assure him, was foreign to the LORD PROVOST's intention. He had received information that a treaty was going forward to purchase a house in Queen-street, for the purpose of converting it into a Stamp-Office; and conceiving a situation so remote from the centre of the City would prove very inconvenient to the inhabitants, he felt it to be his duty to address Mr. Sedgwick for information, and at once to state his objection to it. It may, perhaps, be quite correct, that if the treaty is suspended, or abandoned, such will not be owing to any interference on the part of the LORD PROVOST; that, however, is of very little consequence, provided that the result *terminate in this*, and a situation more eligible be fixed on; but, with every possible respect for Mr. Sedgwick's opinion, the Lord Provost has uniformly found, that in every application or representation made by the Magistrates of a great community, upon either an actual or alleged inconvenience to that community, and when the interest of the Revenue is not to suffer, Government uniformly receives *such* with that attention which a parent pays to the respectful representation of a child, and that in the present instance the same feeling would be experienced.

"'City Chambers, 10th April, 1818.'

"I learned from Mr. Dumbreck, that a Mr. Johnson, a Member of the Town Council, had been with him, to learn if any treaty was on foot for his hotel, intimating that he would be very imprudent to part with it at the price he set upon it,

which was much too low, and that at any rate he ought not to *ask* or *take* less than 12,000l. (which terms it was of course conceived I should decline); but Mr. Dumbreck said he had fixed his price if he sold, that he did not mean to ask more, and he could not take less. You see how they *manage* matters in this part of the world. Heaven defend us! I fold up this hastily, that I may not lose the post; and with the best wishes to the Board, believe me, my dear Sir,

"Yours, faithfully,

"JAMES SEDGWICK."

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"Stamp-Office, London, May 4, 1818.

"MY DEAR MR. SEDGWICK,

"As I recollect Dr. Johnson's observation, that 'wherever a man *sups* he would wish to *breakfast*, in *Scotland*,' I cannot flatter myself that even my honeyed lines can give any additional flavour to your morning's repast. You may believe that I am greatly relieved by your pacquet just now received, by hearing you feel yourself somewhat better. By the time you open this, I hope you will have found yourself very considerably better—indeed well enough to proceed on your intended progress, which will give great pleasure to all your friends here, who heard, with much concern, of your being so very unwell as your last favour so plainly indicated. It was quite kind of you, under such circumstances, to write to me at all. We are very sensible of the very anxious and laborious inquiry you are pursuing—the nature of which, under the discouragements and impediments we know you have, and will continue to meet with, as you search after the real truth of things, disguised and fortified as they are by the craft of those you have to deal with, necessarily involves matter of difficult and delicate arrangement. It was indeed high time that a close and correct revision should be made of the state of our Revenue in Scotland, and the character and conduct of the

several Officers who have the management of it there; and I trust, from the minute view you have taken of the whole, that it will not be too late to effect an improvement in it, which it seems so much to require. The facts of mismanagement in the different departments you have looked into, and which you have, no doubt, stated strongly to the Treasury, will, I hope, urge Mr. Vansittart to act with vigour and decision in effecting the necessary regulations respecting the Legacy Duty in particular, where the great mass of negligence and collusion seems to have accumulated to the most offensive degree. The papers you have transmitted to us for examination and opinion, you may be sure will be immediately attended to, and returned to you in due time, but I would not delay writing to you on that account, as they will require time and consideration.

" We think the manœuvres that have already been made use of, and will, we doubt not, be continued, to interrupt our purchase of a proper office for our service, are very mean and discreditable to the parties who could resort to them, in so barefaced a manner, for private and sinister purposes; but I trust you will have more weight with the Treasury from the representations you have to make, than any influence which they can muster up, to interrupt and counteract us. I am glad that you concur so heartily in opinion with us, on the main point of *not building*, it would certainly be a very unnecessary expenditure of the public money; and we hope you have received such encouragement from the Treasury, as will enable you to settle something about it, before you leave Edinburgh. The Lord Provost certainly was very abrupt in his communication to you, and though he had the *last* word, he did not get much by his interference in the matter; your answer was sharp, but, indeed, his manner of address was provoking, and he brought it upon himself.

" Mr. Dumbreck appears to have acted openly and fairly, and the early possession that is offered us, which will be very advantageous, as the necessary alterations may be set about as

soon as we can get hold of it. Our last remittance from Scotland was a very good one indeed: whether this was done to obtain favour in your eyes, or from something of consciousness or compunction in the gentlemen-managers there, I shall not take upon me to determine. We hope you have thoroughly examined into the proposed addition to the establishment, in the person of a distributor for Leith, a petition for which is now before us, on reference from the Treasury. Mr. Todd and Mr. Somerville, from Edinburgh, have been with Mr. Campbell, and have told him many things about Bremner, and the Legacy Duty, but as they have seen you also, there can be nothing more to communicate.

"We are all astonished at the malversation that has so long taken place in the management of the public business in our Scotch department, and feel the great necessity and importance of the inspection now going on, and of a revision and correction of the present system, which seems to centre in self-interest and irregular accommodations. The *family alliance* must be broken, and we hope, as the Treasury have instituted the inquiry, they will not be diverted from the object of it—a general reform. I must now bid you farewell; the Board unite in best wishes for your recovery, with, dear Sir,

"Yours, very sincerely,

"JAMES BINDLEY."

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"Stamp-Office, London, May 21, 1818.

"MY DEAR MR. SEDGWICK,

"I did not answer your last letter, as it gave us hopes of your being soon after it; and, having nothing particular to say, I thought it would be hard to ask any more questions, or suggest any more inquiries about the office of Edinburgh, and the business dependent upon it, when you had already had so much trouble and fatigue about it. Having since understood that you had met with an unexpected delay in setting your

face homewards, in consequence of fresh matter that had arisen for your further investigation, I would not omit sending you a line, to say that I hope you are well, and not absolutely worn out with the difficulties you have met with in pursuing the object of your journey into Scotland. The inclosed, which was left last evening, furnishes me with an additional reason for writing. We lately received a memorial, complaining of the great delay and neglect of Mr. Bremner, in a Legacy Case, upon which we wrote immediately to him to send for the parties, and settle the business directly. Before this you will have received this memorial, which we thought it right you should see, while upon the spot, and I have merely noticed it to you, that Bremner should not smuggle the matter up, without speaking of it to you. I do not question your opinion as to the extent of our loss on the Stamp-Duties in North Britain; both because you had made inquiry after them, and had, therefore, good grounds for what you said on the subject, and *I* only spoke my *hopes* that the people in our confidence had not been such worthless stewards, as I now fear they will turn out to be. We have heard nothing from the Treasury respecting Sir John Marjoribank's offer, or relating at all to the providing a new office. They very properly wait for your report, and personal information concerning it; but I do hope they will take the matter up in earnest, as nothing can be worse, in every respect, than the one we have at present. I have nothing to add, but the kind wishes of the Board for your safe return to us, and that

"I am, my dear Mr. Sedgwick,
"Yours, very sincerely,
"JAMES BINDLEY."

I would appeal to this official correspondence, which was never meant to see the light, to repel the charge which your Reports throughout take such marked pains to convey,—that I have been

unfaithful to my public duty. I ask a verdict on this evidence only as far as it goes. I have abundant testimony, still stronger and more demonstrative, behind.

I had, be it remembered, to conduct my inquiry into the Stamp system of Revenue in Scotland, unaided, and to contend singly against the giant strength of that power which started out upon me in every step of my progress. The space to which I am necessarily limited, precludes me from entering into detail on the harassment which I underwent; that it was of no light kind, may be collected from the following letter, which I had occasion to write to Lord GRANVILLE SOMERSET, one of the Lords of his Majesty's Treasury, and to which I only advert, that I may not leave my assertion unsupported:

"Somerset-House, July 7, 1819.

"MY LORD,

"I have read through the supplementary memorial of Mr. Bremner. His obvious aim in this, as in his former answer, is to draw off the attention of the Treasury from the true causes which led to his suspension, and to lead it to points which had no sort of influence in producing it, and then arguing upon them as if they were the insufficient and unjustifiable occasion of it. I shall certainly not trouble your Lordship with any detailed discussion of this document; indeed, were I to do so, I should only promote Mr. Bremner's object, by contributing to withdraw the attention of the Lords of the Treasury from the strong statement of facts which the Board have placed under their consideration, and to divert it to occurrences of no relative importance.

"With respect to the settlement of Colonel Lemond's business, which is gone into with so much prolixity of detail, there was no charge of delay in this particular case against Mr. Bremner, which called for this parade of exculpation. I took the papers connected with this case to London, most certainly, as I did the papers in the other cases adverted to; but the reason that Mr. Campbell, to whose official examination they were submitted, did not return them, was this—it was daily expected, from the communications which had been made to the Treasury, that some step would be taken respecting the removal of Mr. Bremner; besides which, it would have been more peculiarly injudicious at such a crisis, to have consigned to Mr. Bremner the settlement of a business, which, upon the face of the accounts themselves, which are in Mr. Campbell's office, and can be at any time produced, he had manifested an ignorance, which showed him utterly incompetent to the management of it.

"Permit me, my Lord, before I conclude this, to add, that if the endeavour of any public Board to discharge conscientiously its duty to the public, by the removal of a notoriously unworthy officer, is to occasion as much personal harassment, and as much interruption to his official business, as this affair of Mr. Bremner has occasioned to me, no man in future, who values his own quiet, will easily be induced to rescue the Revenue from abuses, however gross, or to relieve it from mismanagement, however corrupt.

"I have the honour to subscribe myself, my Lord,

"Your Lordship's most obedient and faithful servant,

"JAMES SEDGWICK.

"Lord Granville Somerset, &c. &c. &c."

I am unwilling to press too long at once on the attention of the public. In my next, Sir, I mean to show that all this iniquitous system of fraud and mismanagement, together with the total

defeat of all my attempts to reform it, was every syllable of it *within your knowledge* during the whole of the time when—*although not the most distant allusion is made to it*—you were penning your Report, which is so drawn up as to impress the public with the opinion that your inquiry has been directed to defects in the Stamp Department, mainly produced by *my* negligence and want of care for the public interests.

I of course do not mean to confine the letters I have already, and shall hereafter address to you, to the columns of a Daily Paper; I shall, when concluded, present them before parliament and the public in a more permanent and respectful form. But as mutilated extracts from Reports have gone the round of every Public Journal, I am constrained to follow in the same track. It is only by this that I can have any hope of overtaking them.

I subscribe myself, Sir,

Your most obedient Servant,

JAMES SEDGWICK.

Stamp-Office,
Somerset-House, Sept. 14, 1826.

## LETTER III.

SIR,

LET it not be for a moment supposed, that in the proof I have already brought forward of my long conflict with the ruinous system of fraud which prevailed in the Stamp Department of Scotland, that I mean to plead these services as a set-off against any acknowledged subsequent failure in my duty to the public. Let me not for a moment be held to admit, that your Reports have proved malversation against me, and that I am urging my zeal against official delinquency in Scotland, that it may be received into the scale, and weighed against the pages of your Parliamentary Reports. No, Sir; the course I have adopted is that which offers the most conclusive proof that my character stands publicly misrepresented in your Reports. It is with *that* view, therefore, and for that purpose, I have adopted it.

Although no malversation or abuse of any kind —I use the terms in their known acceptation, as importing a perversion of official authority to a corrupt or improper purpose—although not a single abuse or malversation of any kind is discovered, or pretended to be discovered, on the part of the Board of Stamps, yet my name is so eagerly obtruded into every page—it is so dove-

tailed into every topic of examination—I am disjoined from my colleagues in so pointed and peculiar a manner, and the whole inquiry is so strikingly directed against *the Chairman*, that all who read the extracts which the daily newspapers put before them, are led, and very naturally, to infer that my known official conduct had been such as most urgently, essentially, and beyond every thing, required investigation; and in the rear of all this,—and while the unfavourable suspicions thus created are yet warm,—comes the attempt to brand my character with that base opprobrium which I repelled,—with an expression of scorn which I shall never cease to feel,—at the conclusion of my first letter.

I have said in that letter, that when your APPENDIX appears, containing *the evidence* upon which you have endeavoured to fasten upon me a charge of corrupt collusion, with regard to a fraud which you aver to have been practised upon the Revenue by the County Fire Office, that I would dissect the whole, and that I would do it thoroughly and openly. To have published your Report, containing so very grave and weighty a charge, and to *keep back* the Appendix, containing the evidence upon which it is grounded, is a circumstance alike *unprecedented* and unaccountable. What is an *Appendix* but a document coupled with and *appended* to the Report? Let it appear when it may, it is no longer an *Ap-*

*pendix*; one advantage gained against me by the withholding it is this, that the charge having once made its way all over the kingdom without the production of the evidence, which went most decidedly to *disprove* it, gains general belief; and when at a distant day the *Appendix* is published, no one heeds it; it becomes a last year's Almanac. The daily newspapers, which have circulated the charge, have their columns too fully occupied to return again to a subject of Reports, upon which they have already, and so long ago, made such ample extracts; and after my character has been utterly destroyed by the accusation, then appears the evidence which would have refuted it, but which is kept back till no one is concerned to examine it, and when,—for any purpose of justice, —it might as well never have been published at all.

Being fully aware of the injurious impression which has been produced against me by the mode in which your Report is drawn up, and knowing too the pains that are taken to confirm and give effect to this impression, I have resolved not to wait for the publication of *the Appendix*. I am abundantly prepared to repel every imputation contained in it; I will, therefore, proceed without delay, to enable the public to see clearly into the spirit in which, so far as I am concerned, your Inquiry has been conducted, and to decide, —as I have before said,—upon the aim and the

object of it. I begin with the following extract :—

" On the 3d of June, Mr. Deans was, by the Chairman's advice, sent to the County Fire Office to investigate the numbers there; this person was furnished with fourteen numbers of Policies, and he was directed to ascertain when the assurance on each commenced, and when it terminated. Whilst he was in the County Fire Office, and examining the books in pursuance of his instructions, in company with a Clerk of the County Fire Office (of the name of Johnson), Mr. Beaumont, the acting manager of that office, came to them; and upon being informed of the object of Deans's inquiry, he gave directions to the attending clerk to supply him with any information he wanted.

" On his examination as to the circumstances occurring at this interview, Mr. Deans states as follows:—

" ' I saw in his (Mr. Beaumont's) hand, a paper, containing *two numbers*, that I thought resembled a paper I had seen in Mr. Sykes's hand in the morning; he came out with it in his hand, as if to make some comparison with a paper in my hand. I stated, that I was directed to inquire when the Policies commenced, and when they terminated; and he folded up the paper and put it into his waistcoat pocket, and I believe, from the appearance of it, it was a copy of the same paper that I saw in Mr. Sykes's hand in the morning.'

" Mr. Deans proceeds to give the reasons which induced him to think that the paper he then saw was the one which he had seen before; and further, that on being called before the Board on the 21st of June, to give an account of this transaction, he, on that occasion, stated that he had seen a paper with *two numbers* on it in the hands of Mr. Beaumont, and that he repeated this statement to Mr. Mawe, who was required by the Chairman to attend in the Board-room, for the purpose of hearing such statements made. It will be

further seen, that Mr. Deans describes the hand-writing on the paper in question, as being recognised by him as that of one of the clerks in the Solicitor's office. We, accordingly, examined the individual thus referred to, who states, he made a copy of the paper in question, which he understood was for the use of the Chairman.

"We have thought it unnecessary here to enter into a more full detail or examination of the facts, of which we have thus submitted a brief statement; we beg leave, however, to refer your Lordships to the evidence of the several persons named in the margin, *by which that statement will be found to be fully borne out,* with the addition of several other particulars bearing upon the transaction. We also beg to call your Lordships' attention to the evidence of Mr. Sedgwick, on the same subject, in which it will be seen that he strongly denies the imputation of his having obtained the numbers, for the purpose of communicating them to Mr. Beaumont; and we should add, that this denial is confirmed by the evidence of the last named gentleman, who positively asserted that he never received any such communication from the Chairman."

What is the inference intended to be drawn from this? Why it is manifestly meant to be implied that,—having been accessary in procuring the returns of duty upon these *two Policies*,—I had privately furnished the Managing Director with *two numbers;* thus, if possible, to prevent *the undue return of duty* upon them from being investigated with effect! Can any charge convey more of infamy with it? Now, how stands the fact? Why, when I come to inquire into the period at which these said *two Po-*

*licies* were issued,—for I knew nothing at all about them when under examination,—they relate to a period as far back as the years 1811 and 1814, at which time I was Chairman of the Excise Board in SCOTLAND, *and did not even know that such an establishment as the County Fire Office existed!!*

It is as if a man should be accused of having set his house on fire, when the fact turns out to be, not only that the house *never was burnt down*, but that the charge against him is laid *ten years before he was tenant!*

I proceed to another extract :—

"As several of the policies to which suspicion attached, purported to have been issued to parties residing in Edinburgh, Mr. Sykes was directed to address a letter to the Solicitor of Stamps in that city, inclosing a list of policies effected there, respecting which these irregularities were suspected, and requesting him to obtain all the information in his power, as to their commencement, continuance, and termination. By the answer to this letter, your Lordships will perceive that the fact of the existence of some of these policies, during the years for which allowances or return of duty had been claimed and granted at the Stamp Office, was clearly ascertained, though the death or failure of several of the parties prevented a full report upon the whole list. A few days before this answer from Mr. Bremner (the Solicitor in Scotland) was received in London, Mr. Sykes mentioned the circumstance of the suspected fraud to the Chairman; but he did not communicate to him the fact of the application having been made to Edinburgh, until Mr. Bremner's answer was received, when Mr. Sykes took it into the Board-room, where the Chairman had

now resumed his attendance. It is stated in evidence, to which we beg to refer your Lordships for a more particular representation of what had passed on this occasion, that the Chairman expressed himself *very much dissatisfied at the reference to Edinburgh*, and objected to the course of following up the inquiry, except through the County Fire Office itself.—On the 2d of June, 1824, Mr. Mawe, clerk in the Solicitor's office, was sent for by the Chairman, for the purpose of making some inquiries on the subject of the investigation. On this occasion, the Chairman *repeated his dissatisfaction* at the course which had been taken."

What does this plainly mean to insinuate? It means to insinuate *this*—that being previously aware, that possibly an account of *undue returns of Insurance duty might* be obtained, if inquiry was pursued *in that quarter*, that *this dissatisfaction* which I expressed, arose from my finding that Mr. Sykes, the Solicitor, had directed his inquiries in *that* channel.

Such is the imputation conveyed. Now for the fact.

I *did* express myself *very much dissatisfied* at this. And why? Because I found that Mr. Sykes had carefully concealed from me, as Chairman of the Board, the supposed undue returns of duty which some Informer had alleged to have been fraudulently obtained by the County Fire Office, of which I was one of the Directors; and that instead of at once—as it was his duty to have done—instituting a prosecution, if he had evi-

dence to support it, he was *mixing up my name as a Director* with this *suspected* fraud, in a correspondence carrying on, unknown to me, with Mr. BREMNER, the Solicitor of the Stamps in EDINBURGH, with whom the public are by this time acquainted (he is since dead), who, I knew, would not fail to *inquire away* my character, as well as that of the County Fire Office, under the pretext of procuring information as to these *suspected* frauds; and I was the more *dissatisfied* with this course of inquiry, and had the more reason to be so, knowing that Mr. SYKES having been sent down *on a special Commission* to enquire into and report on the conduct of this Mr. BREMNER, had so managed his inquiry, and so framed his reports to the Lords of his Majesty's Treasury, as not only to screen and cover up that flagrant system of fraud and abuse, which, I had already investigated and exposed, but to represent Mr. Bremner as a man of *integrity* and a deserving servant of the public!! The particulars of this I shall detail hereafter. In the meantime, enough, I hope, has been said to account for my *dissatisfaction*, and to justify it.

I quote the following passage as displaying with prominent effect the *criminating insinuations* which pervade your Reports, while not a shadow of evidence is brought forward to authorize or support them:—

"In consequence of the Chairman of the Board of Stamps being also a Director of the County Fire Office, Mr. Sykes represents that he had felt a difficulty in communicating with him, in the first instance, on the subject of a charge against this Company, nor did the Chairman receive any intimation of the imputed fraud from the Commissioner to whom the suspicion had been originally imparted. By the evidence of Mr. Sykes, it appears that he was apprehensive that the object of the inquiry would be defeated by Mr. Sedgwick being put in possession of the facts on which the charge was founded, before the necessary steps had been taken to establish the case.—This impression, *founded in an avowed distrust of the conduct of the head of the department,* whilst it appears to afford a striking instance of the evil effects to which we have adverted, as being likely to result from public officers being also engaged in private speculations, with which they are officially brought into contact, appears also to call for animadversion, as being incompatible with that co-operation and confidence which it is so important to maintain amongst all officers of the department."

I shall content myself here with merely challenging Mr. Sykes, as SOLICITOR of the Board of Stamps, to produce one single act of my conduct as CHAIRMAN—or he may take, if he will, the whole range of my public life—that can warrant the slanderous imputation which is here conveyed, and which the wording of the Report endeavours to point with such effect.—Having said thus much, I hold it unworthy of any other answer or of any further comment.

I will come now to the imputation—conveyed in a manner to give it, with Parliament and with the

public, all the effect of a proved and positive charge, —of having destroyed the evidence necessary to prove the fraudulent returns of duty alleged to have been procured by the County Fire Office, of which I was one of the Directors, and to which it is suggested, too broadly to be mistaken, that I was accessary as Chairman of the Stamp-Board.

" It will remain also for your Lordships to consider how far it may be expedient to direct the Board of Stamps to institute a prosecution against the County Fire Office, for the allowances and returns unduly obtained in the manner above described. The propriety of such a measure had, we understood, occurred to the Solicitor of Stamps in an early period of the investigation; but that officer states himself to have been checked in his preparations for such a proceeding, by the difficulty he found in obtaining the accounts which it would be necessary to produce, in order to establish his case. It is only since the appointment of the present Comptroller, that these accounts have been kept with any degree of order or regularity; previously to this time they were nominally in the charge of a distinct office; but it appears that no attention was paid by the officer immediately in charge, or by his superiors, to their proper custody. On our calling for the annual returns subsequent to 1809, it was found that no copies of them had been preserved for many of the years; that the account had been lost; and that others were in so incomplete a state, as to be altogether useless. On our specially applying for the Distributor's Accounts of the County Fire Office for the year 1819, nothing could be produced to us but the fragments of the cover, and a part of one of the pages. The neglect and inattention with respect to these accounts is the more worthy of remark, in reference to a statement made by *the Chairman* in his evidence, 'that without them it is impossible to trace any fraud.' "

Now the intent of this statement manifestly is—and it could not fail of its effect—to impress the minds of the Lords of the Treasury, of Parliament, and the country, with the opinion, that, having been corruptly colluding with the Managing Director of the County Fire Office in procuring undue returns on policies insured by that Office, I had contrived,—should the transaction ever be brought to light,—to leave no clue to them behind, by having been, in some way or other, accessary to the destroying the accounts, and thus effectually defeating the ends of justice. This is not affirmed in so many words, but it is implied so strongly in the above passage of the Report, as to lead the mind of every one that reads it to this conclusion. It is the conclusion which was intended to be drawn from it, and it is the conclusion which everywhere *has* been drawn from it.

I now entreat the attention of the public to the plain and brief statement of the case.

With regard to these *accounts*, as they are termed, they are nothing more than the *copies* of their quarterly accounts, lodged at the Stamp Office by all the different Insurance Companies, as directed by act of Parliament.

It is not the accounts of the County Fire Office exclusively—and this is an important fact—that were damaged or lost; they suffered only from the same general negligence, in common with those *of every other Insurance Office;* whereas

every one would be led to conclude, from the Report, that this negligent superintendence was confined, for whatever reason, to the accounts of the County Fire Office *alone.*

Formerly, and until the year 1822, there was an officer, Mr. Becket, whose duty it was to compare those copies with the original accounts: he was in that year superannuated, and as the Board were of opinion, that he had of late years performed his duty very negligently, and that the office itself was, upon the whole, superfluous, it was abolished, and the duty of it transferred to the Comptroller's Office, where they have ever since been kept, as the Report admits, " with order and regularity."

These *Copies* of the Quarterly Books were not *nominally,* as stated in the Report, but *actually* in the custody of Mr. Becket, as Inspector; and it appears that, although *from the year* 1809 *to the year* 1819, many of them had been torn and impaired, yet that all the accounts *since the year* 1819 have been carefully kept, and are now in the Comptroller's office, in a perfect state of preservation.

A wide field of detail opens upon me, but I must be brief: There is no evidence so conclusive and satisfactory as *dates;* for TIME will not be turned out of his course, and his testimony cannot be tampered with. To that testimony I proceed to refer:—I was appointed to the Board of Stamps in 1817—thus *almost the whole* of this period,

from 1809 to 1819, I was at the *Excise* Board of Revenue *in Edinburgh.* I trust I need not offer any other evidence to exempt myself from all imputation of having participated in the negligence —very blameable certainly—with which the Inspector kept his books at the *Stamp* Office in *London.*

But let the carelessness of this Inspector have been what it may during this interval between 1809 and 1819, it is found, and admitted in the Report, that *since that period* they are complete, and of course, in any case of prosecution, they would be perfectly available to any purpose to which they could be applied. Let us now once more refer to *dates.* I was elected one of the Directors of the County Fire Office, on the 14th of *February,* 1822, *before which time I held no shares in that office,—I had never seen the face of the Managing Director,—nor did I know him even by name.* Now from the year 1819—and I beseech attention to this—all the accounts are in an *entire state* of preservation, and have been kept with the most perfect correctness!

Having given this plain and simple statement, I shall leave it to produce its own effect. It carries its own comment along with it.

There is, however, one fact stated in the passage above quoted from your Report, to which I cannot forbear adverting before I conclude this letter. It is the following:

"On our calling for the annual Returns subsequent to 1809, it was found that no copies of them had been preserved for many of the years, that the account had been lost, and that others were in so incomplete a state as to be altogether useless On our *specially applying* for the Distributor's account of the County Fire Office for the year 1819, nothing could be produced to us *but the fragment of the cover, and a part of one of the pages.*"

It struck me, when I read this, as carrying with it an air of burlesque, almost approaching to disrespect, that any clerk, when gravely called upon, should produce before you so ludicrous a remnant. I accordingly sent yesterday for Mr. Deans, one of the Clerks in the Comptroller's Office, to inquire from him how this could be, when, to my surprise, I found that *the fact was not as your Report has stated it;* that true it is, that the account of the year 1819 was incomplete, but that *two Quarters'* Accounts of that very year were *produced before you perfect and entire.* That I might satisfy myself of this—for I could scarcely credit it after the above deliberate averment—I desired him to bring me up the *two quarters* of the accounts which had been so produced to the Commissioners of Revenue Inquiry, which he immediately did, and I found them *quite complete,* and respectively indorsed as follows :—

"An Account of Duties received on Sums insured against Fire by the County Fire Office, from the 25th December, 1818, to the 25th March, 1819."

"An Account of Duties received on Sums insured against Fire by the County Fire Office, from the 25th March, 1819, to the 24th June, 1819."

This single fact, taken in connexion with the train of statements that surround it, affords matter of very serious meditation. The most unreflective must be startled at this mode of conducting a PARLIAMENTARY INQUIRY, upon the result of which the Government are to be called to sit in judgment. It is a fearful precedent, and involves consequences far beyond those in which I have any personal stake. Let reform be pursued as zealously as it may, but let it be pursued in the track of justice.

I subscribe myself, Sir,

Your most obedient Servant,

JAMES SEDGWICK.

Stamp Office, Somerset House,
Sept. 21, 1826.

## LETTER IV.

SIR,

HAVING disposed of the accusation regarding the COUNTY FIRE OFFICE, which had been shaped with so much labour, and got up with so much privacy, I can now proceed, with a more undivided attention, to the task that lies before me.

The over-eagerness to criminate shines out,—as I have before remarked,—so glaringly in your Reports, as to have induced a very general belief that the motives which excited it were open to distrust. You have *yourself* shown,—as will appear by my last Letter,—that this belief was well grounded. I can wish for no better or more conclusive proof than is furnished by the Reports themselves. They bear evidence of your intemperate and keen pursuit of me in every page; but, fortunately, your efforts have failed from being too visibly overwrought, and I am made to owe to your excess of zeal, an advantage I never should have obtained from your sense of justice.

I shall proceed to notice in detail the farther imputations contained in your Reports, and the charges which, by *implication*, those Reports seek to establish against me. I will take them in their order, and when I shall have so done, I will not content myself with asking for my acquittal: No,

Sir, I will take my stand on higher ground, I will put it to Parliament and to the Country to decide which has most effectively discharged his duty to the public,—you, as CHAIRMAN of the Board of Inquiry, or I as CHAIRMAN of the Board of Stamps. Putting this point in issue, we will go to trial. I take your consent for granted, because with the case so favourably put, you can hardly be supposed either to decline the appeal, or to demur to the jurisdiction.

I fear that I shall be drawn into some length; but I must intreat indulgence. I will contrive to be as brief as I am able. In an English Public I have a generous and enlightened Jury. They will be patient with me.

I begin first with remarking the anxiety with which Parliament—much to its honour—has endeavoured to guard against all undue bias, on the part of the individuals appointed to the high trust reposed in them by this COMMISSION OF REVENUE INQUIRY.

For the more effectually ensuring the equitable and unprejudiced discharge of their duty, the Act under which they are appointed imposes the following oath upon each Commissioner respectively:—

"I, A. B., do swear, that I will faithfully, impartially, and truly, according to the best of my skill and judgment, execute the several powers and trusts vested in me, by an Act made in the second year of the reign of King George

the Fourth, intituled, 'An Act to Appoint Commissioners for Inquiring into the Collection and Management of the Revenue,' &c., according to the true tenor and purport of the said Act.—So HELP ME GOD."

It is impossible for me not to pause here for a moment, and to ask, how the attempt publicly to brand my name with ignominy, by insinuations utterly unfounded—which had not even the shadow of any thing like support—and which, in my third letter, I so completely and convincingly disproved—how this attempt, I say, which so woefully failed, can be reconciled with that *faithful*, *impartial*, and *true* discharge of your duty, from which you have sworn not to deviate?

This offers a wide scope for observation, but I have no leisure to pursue it. In the mean time, I keep this oath and its purport steadily before me; because, in the inquiry which I am now conducting, the references I shall have to make to it as I proceed, render it of the utmost importance.

I turn now to your Report, and I shall begin at the beginning:—

"Previous to entering upon our examinations connected with the Revenue of the Stamps in England, we had been informed that considerable difficulties were experienced in carrying on the usual official communication between your Lordships and the Commissioners of Stamps; that great delays had taken place in the transaction of business, and much inconvenience had been sustained by the public."—(13th Rep. p. 6.)

Now it was, manifestly, most essential, that the Commissioners of Revenue Inquiry,—who had sworn to fulfil the trust reposed in them "faithfully, impartially, and truly,"—should enter upon it with minds perfectly unwarped; that they should give no ear to any rumours which might give their judgment an undue bias, but that they should come to their task of investigation perfectly unprejudiced, and with no inclination to turn from the onward course of justice either to the right hand or to the left. But we have it here under their hands—we have it on their own unreflecting confession,—that they had, each in his own path of hearsay, imbued their minds beforehand with those prejudices, the result of which are even here put on record and made to operate with all the effect of a positive and proved charge. They state that *previously to entering upon their examination*, they had *been informed*, —but they do not say when, how, or by whom,— that the accustomed official communication between the Commissioners of Stamps and their Lordships had been interrupted—that *great delays* were experienced in the management of business, and *much inconvenience* sustained by the public. And these gratuitous animadversions are sent forth to the world, and made to produce their effect, while no evidence is afterwards adduced that sustains them.

The Report thus proceeds:—

"A very *general concurrence of information also,* relating to this department, *tended to give us an unfavourable impression as to the efficiency of its management*—an *impression* which our own observation in the course of the communications that we found it necessary to have with the Board, preliminary to our detailed inquiry, strongly confirmed. In the Appendix, we have annexed *the copy of a Letter*, which we deemed it necessary to address to the Board, in order to compel the production of certain accounts, by no means of an unusual description, for which we had at that time waited nine months, although accounts of a similar nature had been transmitted to us in a less number of weeks from other departments, to which our requisitions had been directed."—13th Rep. p. 6.

The effect of that *unfavourable impression* thus avowedly imbibed, previous to entering on the exercise of their functions, is most strikingly exemplified in this their *preliminary* proceeding. It denotes in a marked manner the spirit of hostility which the Reports evince throughout. To verify this, it is necessary to go into the following particulars, which ought in justice to have been stated, but which the Report has omitted.

The Act of Parliament (1 and 2 Geo. IV.) under which this Commission of Revenue Inquiry is instituted, empowers the Commissioners to require the production of any records, books, papers, writings, or documents, relating to the subject matter of their inquiry; and if the persons *summoned* to appear before them shall *wilfully neglect* to produce such books, writings, or documents, touching or concerning any matter or thing

which the said Commissioners of Inquiry are, by this act, authorised to inquire into, it is enacted that—

"Then, and in every such case, it shall and may be lawful to and for the said Commissioners of Inquiry, or any three of them, and they are hereby authorised and empowered to make and *issue their warrant or warrants*, under their hands and seals, or under the hands and seals of any three of them, for *taking* and apprehending and bringing before them any such person or persons; and if the said Commissioners shall deem it necessary for the effectual execution of the purposes of this Act, it shall be lawful for the said Commissioners, or any three of them, by like warrant under their hands and seals, to *commit* any such person or persons so brought or being before them, *to such prison as the said Commissioners of Inquiry*, or any three of them, shall *think fit, there to remain without bail or mainprize*, until such person or persons shall submit to be examined touching and concerning all matters and things necessary for the execution of the powers given by this Act, or to make such production of such accounts, returns, records, books, papers, deeds, writings, or documents, as aforesaid, as the case may require."

The power here granted is very great—it is a power, which—if applied in the spirit of hostility—is obviously capable of being abused to purposes which it is fearful to contemplate. The Legislature, in its wisdom, might possibly foresee some occasion on which its application might be called for; but it was clearly meant to be employed only in the last resort, and under circumstances—hardly to be contemplated—of such wilful and

obstinate resistance as justified its necessity. The following is a copy of their *letter* above referred to by the Commissioners of Inquiry, addressed by their Secretary to the Commissioners of Stamps. It is dated from EDINBURGH, where they then were, and before they had as yet commenced their inquiries at Somerset-house.

" Office of Revenue Inquiry,
*Edinburgh,* 28th Oct. 1824.

" GENTLEMEN,

" I am directed by the Parliamentary Commissioners of Revenue Inquiry to refer you to my letter of the 16th of January last, inclosing a schedule of accounts required by the Commissioners, with as little delay as practicable, in reference to their inquiry into the Stamp Department; and also to my letter of the 28th June last, referring to the above, and desiring that the accounts in question might be forthwith transmitted; and I am to express to you the surprise and dissatisfaction of the Commissioners at the continued delay of these accounts, unprecedented in any department to which their inquiries have hitherto extended. It is the command of the Commissioners that this delay may be forthwith explained; and if the accounts be not transmitted *without further delay,* WARRANTS WILL BE ISSUED TO ENFORCE THEIR DELIVERY.

" I have, &c.

(Signed) " J. S. REYNOLDS.

" To the COMMISSIONERS OF STAMPS, London."

A letter, bearing a menace so degrading, was never before addressed to any Board of Revenue in this kingdom since Revenue Boards had existence. It was natural to suppose that only the

most perverse and refractory disregard of their application for the accounts referred to could have drawn forth such a letter;—and to this conclusion it was intended that Parliament and the public should be led;—for, while the letter itself is inserted at the very outset of the Report, the *answer* to it, which contains a satisfactory and respectful explanation of the cause of the imputed delay, is *suppressed!* Is this again, consistent with the oath enjoined by Parliament, and which the Commissioners of Inquiry have respectively sworn, that they "will faithfully, *impartially*, and truly, according to the best of their skill and judgment, execute the trust reposed in them?"

The following is the answer which was forwarded on the receipt of the above letter:—

"Stamp Office, London, Nov. 1, 1824.

"SIR,

"In answer to your Letter of the 28th ultimo, I am directed by the Commissioners to acquaint you, for the information of the Parliamentary Commissioners of Revenue Inquiry, that they regret the inclosed Accounts have not been earlier forwarded; but the delay did not arise from any intentional neglect. The fact is, that some misapprehension appears to have arisen on the part of the Secretary, as to the necessity of forwarding them after it was known that the Commissioners of Inquiry were gone *to the North*, instead of instituting their inquiry into the state of the Stamp Office in *London*, as it was expected they would do, and for *which it was thought these documents were intended*. The greater part of them have been ready since July last, before which time they could not be completed. The Board greatly regret that such a mis-

apprehension should have arisen, as the papers forwarded by to-day's post *might* have been transmitted, and *would* have been, had they not been thus reserved *till the inquiry took place in London*—this circumstance, had it been understood, would have made it necessary to prepare them with as little delay as practicable.

"Mr. Kappen, the Secretary, was obliged, about ten days ago, to leave London for Hastings, for the recovery of his health; and there is one document, being the second article required, which is (he supposing it not to be wanted) locked up in his private drawer; and which, had he been here, would have accompanied these; but the Board have written to him to return to London; which, if the state of his health admits his undertaking the journey, he will immediately do, when the remaining document will be forthwith transmitted.

"I am, Sir, your most obedient humble servant,

"WILLIAM WARD, Pro Sec.

"J. S. Reynolds, Esq."

On what principle of common justice could the Commissioners of Inquiry justify the suppression of this answer, while they introduce their own extraordinary letter into their Report, and make it the ground of such invidious and uncalled for animadversion? The letter itself, forwarded by the Commissioners while at *Edinburgh*, sufficiently denoted beforehand the disposition with which they would enter on their office of *Inquiry* when they came to *London!*

Setting aside, for a moment, the indignity passed upon the Commissioners of Stamps by this threat, that if the accounts were not issued without further delays, *warrants would be issued*

*against them*—Passing on, I say, from this imperious and arbitrary threat,—there is one passage in their letter which deserves particular remark. It is the following:

"And I am to express to you the surprise and dissatisfaction of the Commissioners, at the continued delay of these accounts, unprecedented in any department to which their inquiries have hitherto extended."

The Commissioners, be it remembered, were at this moment sitting in *the Stamp Office, Edinburgh.* They must have had before them all that frightful system of fraud and mismanagement detailed in my correspondence with Mr. BINDLEY! They must have had within their knowledge, not merely the *delays* of Mr. Bremner, the Solicitor of Stamps in *Scotland*, to produce his accounts, or to reply to the endless applications of the Board for them; but, his absolutely persisting to withhold his accounts altogether, and treating their applications with the most deliberate disregard! And yet, when the Secretary in *England* is found to be open,—though *unintentionally*, and in a *single instance*—to a charge of *delay* in forwarding a mere document of office, the Commissioners publicly denounce the offence as being, in its kind, "*unprecedented in any department to which their inquiries have hitherto extended.*" Add to this, that the whole detail of abuses which *I had already brought to light*, and of which YOU

had every clue to the investigation which *my previous inquiries* and *Report* afforded, have not only been hitherto kept back from the eye of Parliament and of the public, but you have taken—as I will show hereafter—every pains to shelter them, and—with enormous loss to the Revenue—*they are upheld by* SCOTCH *influence to this hour.*

There are no REPORTS to which the public attach greater weight, or which they receive with greater reverence, than Reports proceeding from a PARLIAMENTARY COMMISSION OF INQUIRY. This feeling is most proper;—it is a feeling which lies at the foundation of that respect which ought ever to exist towards whatever emanates from so high and estimable an authority—from an authority delegated by the highest tribunal known to this kingdom, and which is assumed to have been entrusted to individuals who, from their known wisdom and tried integrity, were peculiarly fitted for so arduous and honourable a trust. The persons so appointed have not only their own reputation to support, by the faithful, upright, unbiassed manner in which they discharge the duty imposed upon them, but they have—what is of infinitely greater moment—the character of Government to sustain. It behoves them to take especial care that they do not, by perverting the power thus confided to them, bring those into discredit who placed that power in their hands. Parlia-

ment itself is made to lose much of that strong hold which it has—and deserves to have—upon the minds of the country, if, in any instance, the Persons whom it selects as COMMISSIONERS of REVENUE INQUIRY should be found to have so inverted their authority, as to put down the *Reformer of the abuses*, instead of the *abuse*, and to *uphold* a system fraught with ruin to that Revenue, which it was their express duty to rescue,—as promptly as possible,—from such pernicious and flagrant mismanagement.

I subscribe myself, Sir,

Your most obedient servant,

JAMES SEDGWICK.

Stamp Office, Somerset-House,
Sept. 28, 1786.

## LETTER V.

SIR,

YOUR Parliamentary Reports relative to the Stamp Department, embodying, as they do, such a mass of culpable imputation, had several peculiar advantages towards forwarding the effect they were purposely calculated to produce on the public mind. The eleventh section of the Act under which the Commission of Revenue Inquiry was appointed, requires that the Reports of the proceedings shall be made to the Commissioners of his Majesty's Treasury, "*to be laid before his Majesty and both Houses of Parliament, within one month after the first meeting of Parliament.*" What is the intent of this special provision of the Act? Why obviously this, that ample time might be given to examine the contents of such Reports, and to deliberate on the expediency of adopting such measures,—whether inflictive or remedial,—as the Commissioners of Inquiry might be found to recommend. Was any such opportunity for deliberative examination as the Act requires actually given? No. Quite the reverse. These Reports were actually carried into the House of Commons the *very last day of the Session* on which they could be received. They were forthwith printed, —with the exception of the *Appendix*, con-

taining *the evidence*,—with all possible despatch; and no sooner were they printed than they found their way, wet from the press, to the Editors of the different Morning Papers, and extracts from them, with corresponding animadversions, were dispersed all over the kingdom, while not a single copy was sent to the Board of Stamps, or to any one Commissioner;—and while I had myself applied without success to the Printer, and only procured a copy at last, after an interval of ten days, by personal application at the Vote Office.

All this *ought not to have been*. It is one thing to meet an unfounded accusation, and to repel it, but it is another—when the case has been prejudged—to remove the strong prejudices with which the public mind has been imbued, and to reverse the judgment pronounced by anticipation. Let the cause of this injustice originate where it may, my concern is with its result. From whatever cause it arose, the irregularity of the proceeding, as well as its injury, are the same.

Having said thus much, I return,—adverting to my last Letter,—to the charges contained in your Reports. They proceed thus:—

"In the course of our detailed examination in Scotland also, which, as we have already stated, preceded that in England, it came in evidence before us, that various representations, made by officers there, with a view as well to the security as to the better collection of the Public Revenue,

had not received the attention from the Chief Office to which they appeared entitled; and our general inquiries, in that part of the United Kingdom, satisfied us, that the superintendence, exercised by the Board in London, over the collection of this branch of the Stamp Revenue, was neither regular nor effectual. Under these circumstances, on our return to London, we felt it our duty to postpone other investigations, for the purpose of directing our attention to this department; and as the causes out of which a situation of things, so apparently defective and unsatisfactory, had arisen, could scarcely fail to affect the Commissioners—and as we had reason to suppose that such causes were, in a great measure, to be traced to the state of the Board, it became necessary to give to our examinations a character more personal, as well as to put to the subordinate officers questions more pointedly directed to the official habits and conduct of their superiors, than, under other circumstances, we should have thought advisable."

Now, let us see what it is intended that, by this representation,—" his MAJESTY and both Houses of PARLIAMENT"—should be brought to believe? The impression meant to be conveyed is this —that the suggestions received by the Commissioners of Stamps in *England* from their Officers in *Scotland*, for the better management and security of the Public Revenue, were, in effect, thrown away upon them; and that the Stamp Department on *that* side of the Tweed was composed of very meritorious Officers, whose good services were lost to the Revenue by the culpable neglect of their superiors on *this* side of it.

It will presently appear how far this side-wind compliment to these Officers was deserved. The Commissioners aver in direct terms, that "*their general inquiries in that part of the United Kingdom* satisfied them, that the superintendence exercised by the Board in *London* was neither regular nor effectual," and that this led them to give their examinations "a character *more personal* than under other circumstances they should have thought advisable."

Will it be believed that these officers, whose praiseworthy zeal in behalf of the Revenue is adverted to in terms so complimentary, are no other than Mr. BREMNER, the Solicitor of Stamps, and Mr. PENDER, the Comptroller, whose *malversation* and *chicanery* formed the leading subject of that correspondence with Mr. Bindley which has already appeared before the public!

As no opportunity is omitted throughout your Report to place *these* Officers in a favourable light, and to cast indirect reflections, as well on me, *personally*, as on the Board at which I have the honour to preside, I shall enter more minutely into a detail of facts necessary to show, that your flattery of the one, and your aspersion of the other, are equally undeserved.

In your examination of the Secretary, Mr. KAPPEN, your questions are so framed as to elicit the kind of answers to which they naturally led, but which, when received, were of a very different

complexion from those which you had reckoned upon. The following extract from his examination will open a sufficient insight into the *nature* of the applications from those Officers of the Stamp Department in Scotland which are represented as having for their object "*the security and better collection of the public Revenue;*" and as, of course, deserving the most prompt and attentive regard:

"Do you recollect, amongst the papers which have at various times been received from Scotland upon subjects relating to the Stamp Office, any recommending certain measures to be taken, with a view to a more efficient collection of their revenue in Scotland, and to the good order and discipline of the office?—There have been applications.

"Do you recollect whether the CHAIRMAN has brought those letters under the consideration of the Board, or whether, if he has not done it, you have yourself ever brought those letters under the consideration of the Board?—With respect to an order for *the regulation of the Office,* I do not recollect any circumstance *of that sort* arising, or *any recommendation* arising from the Head Collector, or the Comptroller; but applications have been made from the Head Distributor, as in a recent instance, for *a porter,* which has been refused him; and the Chairman was very violent in his opposition to it; he stated that it was not at all requisite that he should have another porter, *that he considered it a job, and therefore would not sanction it.*

"Can you account, in any other way than from those papers having been thrown aside, and not brought under consideration, for the fact, that many statements and suggestions that have been made by the *Comptroller in Scotland,* have not only not been conceded to, but have not ever

received the smallest notice or answer?—There have been such things certainly.

" Have you ever understood from him, that he has been deterred from making any further suggestions, in consequence of the uniform neglect that his statements have received?—Yes; we had one letter nearly to that purport from the Comptroller.

" Are there many papers that have been laid aside for consideration by the Board, and have not been considered?—Not a great many; the chief of them are the references from the Treasury, which require a good deal of consideration, and some applications, such as that of Mr. Hepburn, *for an additional porter*; he has reiterated his application, and no notice has been taken of it; he has endeavoured to show the necessity even of a *third* porter, and the Chairman says, 'a parcel of nonsense, it shall not be attended to; *it is all a job.*'

" Has that ever been brought under the consideration of the Board?—Yes.

" Are the Board all of the same opinion, that it is a job?—No.

" When such a question as that occurs, and is brought under the consideration of the Board, describe what the proceeding is?—Mr. SEDGWICK sets his face against the application entirely; that deters three or four, perhaps, of the Commissioners from giving any sanction to it. *One* or *two* others may think Mr. Hepburn is better qualified to judge of the necessity of having *this additional porter* than *they* may be, and that he makes those additional applications only from the necessity of such a man being appointed; but from the opposition thrown in the way by Mr. Sedgwick, the Chairman, the other Commissioners do not sanction it; and, therefore, it lies *sub silentio.*"

This examination, which it had no doubt been expected, would go in its result to confirm the good opinion which your Reports so studiously tend

to create—of the alacrity of those officers in *Scotland* in the service of the Revenue, and of the contrasted indifference of the Board in *London*—runs sadly counter to its object. An inquiry of exactly the same purport was made from *me*, as will appear by the following extract from my own examination :—

" Are there any letters that come to you, as CHAIRMAN, of an official character, which you decide upon yourself, or act upon yourself, without communication to the Board?—No, I never receive a letter addressed to myself as Chairman, without handing it over to the Secretary, even though it should be written 'private,' which they sometimes are; as I never receive letters which may not be communicated to the Board; and I consider the word '*private*,' as written to prevent their being opened before they come to my hands.

" Are the Commissioners to understand, that the subjects of all routine letters are, or ought to be, decided upon by the Board?—Yes, certainly.

" Do you recollect several suggestions, of different kinds, that have been presented to the Board from the Comptroller in *Scotland*, relative to the arrangement of the office in that country, to which no attention has been paid?—I will not undertake to answer *that* question; but this I will undertake to answer—that if it *deserved* attention it had it.

" It has been stated to the Commissioners, that on the establishment of the office in Glasgow, for the assay of plate, the Comptroller intimated to the Board, that the duty might be paid by the assay-master to the head distributor in Edinburgh, instead of to the distributor in Glasgow, whereby the poundage might be saved; but that to this no attention was paid, and he received no answer?—I cannot, at this moment, speak to that particular fact; but I am so perfectly aware of the character of the Comptroller's Office, that I should consider

it deserving of very little attention, unless it appeared to do so from the nature of it.

" Generally speaking, if you had opened such a letter, should you conceive, whether coming from Mr. Pender, or any of the Officers in Scotland, that it deserved no attention, and therefore should not bring it before the Board?—Certainly not. If that letter had arrived, I should have placed it before the Secretary; but when I allude to letters that do *not* deserve an answer, *I allude to other instances.*

" There were various other suggestions made by Mr. Pender, on points which, as the Commissioners have understood, have not been provided for, and to which no answer at all was given; in consequence of which, as he declared to this Board, he ceased to make any suggestions on the subject of the department, because they never received any attention: are the Commissioners to consider the Board itself, as a body, responsible for this omission?—Without reference to the particular letters, I cannot answer that question; I am not aware of any letters which have been received on subjects of importance to the Revenue in Scotland, which did not receive an answer.

" The Comptroller also suggested to the Board, that the advertisement duty on the Glasgow, Aberdeen, and Dumfries Newspapers, should be paid to the head office immediately, without going through the hands of the sub-distributors, as was the case with the other country newspapers of Scotland, whereby the per centage to the sub-distributors would have been saved; but the Board took no notice whatever of this suggestion?—It is impossible that I can answer these questions, especially an oath, unless the facts had been previously communicated to me, and I had been enabled to look into them.

" The questions refer to suggestions for the better conduct of the public business, which have received no answer.—I cannot answer without looking into the matter; but as to Mr. Pender, or Mr. Bremner, both of whom are as bad officers as can be, and have squandered away more of the public money

than was ever squandered by any men in their situation, I should have paid very little attention to *their* views of what might be desirable. There could not be worse officers; *my Reports* show what they have been; *my only surprise is, that both he and Mr. Bremner have been continued in office,* for I know, that after the very first year in which I returned from my inquiries into the state of their offices, I increased the Revenue £60,000 on £400,000, showing pretty well what Mr. Pender was *as a Comptroller,* and how *the revenue* was looked after; he was, in fact, *taking interest on the public money, and suffering his clerks to do the same,* as will appear by my Report."

When you received this *last* answer, instead of following up the very important inquiries to which it naturally led, you instantly changed the subject, and turned off to a different topic of inquiry. The *faithful* discharge of your duty would have led to a very opposite course.

Calling again to your memory the oath prescribed by the Act under which you were appointed, and in which you and your colleagues, respectively—have sworn that you would—"faithfully, impartially, and truly, according to the best of your skill and judgment, execute the several powers and trusts vested in you," I would now ask how,—with all the facts within your knowledge to which I shall now proceed to advert, and which I shall produce in detail,—you could, consistently with this oath, affirm deliberately "to his MAJESTY and both Houses of Parliament," before whom your Reports are directed to be laid, that "your

general inquiries in SCOTLAND *satisfied you*, that the superintendence exercised by the Board in LONDON over the collection of *this branch of the Stamp Revenue* was neither *regular* nor *effectual?*" And how, after having had the whole of that system of delinquency in SCOTLAND brought under your view, when conducting your investigation in that quarter of the kingdom, you could steadfastly aver, that, "as *the causes* out of which a situation of things so apparently defective and unsatisfactory had arisen, could scarcely fail to *affect the Commissioners;* and, as we had reason to suppose that *such causes* were, in a great measure, to *be traced to the state of the Board*, it became next necessary to give our examinations a character *more personal*," &c.

At the time that you were penning this statement, *it was known to you*, that Mr. Bremner had been suspended by the Board for his inveterate mismanagement, and that through the medium of that influence, which is all prevalent in Scotland, he had been *restored to office.*

It was likewise *within your knowledge*, that in order to give a colour of justice to Mr. Bremner's restoration, and to destroy, if possible, *the credibility of my Report*—on which he had been suspended,—a COMMISSION OF INQUIRY was, by means of that same influence, nominated, consisting of Mr. SYKES, the Solicitor of Stamps, Mr. CAMPBELL, Comptroller of the Legacy Duty, and a person

chosen in Scotland by the *Lord Advocate*, a Mr. FORBES, then Sheriff of Perthshire. Mr. Campbell, who was too well acquainted with the disastrous mismanagement of the Board of the Stamp Revenue in Scotland, to permit his joining in any *favourable* report of it, remained in London till that part of the inquiry was finished, when he repaired to Edinburgh to join his colleagues.

With the contents of these *Reports* of Messrs. Sykes and Forbes, together *with my annotations upon them*, as transmitted to the Lords of his Majesty's Treasury, *you were thoroughly acquainted. These annotations* will form the subject of the letters which follow this. The public will bear in mind, that Mr. SYKES, as an excuse for the secrecy of his movements in the exploded affair of the County Fire Office—which forms the subject of my third letter—expressed himself "apprehensive that the object of the inquiry would be defeated, by Mr. Sedgwick being put in possession of the facts, on which the charge was founded, before the necessary steps had been taken to establish the case;" and in your Report, in order to enforce the imputation, and to fix it the more deeply, you add—"This impression, *founded in an avowed distrust of the head of the department*, whilst it appears to afford a striking instance, &c." In my next letter, I shall present to Parliament and to the public, the means of deciding how far this *avowed distrust* was authorised

on the part of Mr. Sykes, and how far also you were *yourself* warranted—being, as you were, *well apprised* of the Reports of Messrs. Sykes and Forbes, and of my remarks upon them—to reproach the Chief Board, in *London*, as regardless of the interests of the Revenue, while you represent the delinquent Officers in *Scotland*, as deserving commendation for their efforts made to improve it.

That I may not protract my letters to a longer period than is absolutely necessary, I shall continue those which relate to the Reports of Messrs. Sykes and Forbes, without interval, that I may bring the public exculpation, which your Reports have extorted from me, to an earlier close.

I subscribe myself, Sir,
Your most obedient servant,
JAMES SEDGWICK.

Stamp Office, Somerset-House,
October 5, 1826.

## LETTER VI.

SIR,

As my Report upon the system of management at the Stamp Office in Edinburgh involved charges of serious import against the principal Officers of that department, it was but reasonable to require that my statement should be corroborated. In acceding, therefore, to the request, whether of Lord Melville or of the Lord Advocate, that another Commission of Inquiry should be sent down to Scotland, the Lords of the Treasury acted in the spirit of equity. It was but fairness to Mr. Bremner, who had been suspended, and to others whom my Report involved, that they should have the benefit of a full and fair revision of the charges alleged against them, that it might appear whether they were made upon such sufficient grounds, as might warrant the judgment which, if true, they appeared to call for. Through what influence this second Commission of Inquiry—in itself unobjectionable—consisting of Mr. Sykes, Mr. Forbes, and Mr. Campbell, was obtained, may be collected from the following passage, in a letter from the Head Distributor in Edinburgh (Mr. Hepburne), to the Board:—

"The LORD ADVOCATE informed me, that the Treasury are about to send *three* gentlemen to make a general inquiry into

this department, and to make a Report thereupon to his Majesty's Government. *This will be very satisfactory to us,* and what I have at present to take the liberty to suggest to the Board is, to postpone doing any thing farther, in regard to the appointment of new Sub-distributors, *until the arrival of those Commissioners.*"

It was not difficult to perceive, from the tenor of this letter, that the Officers in Edinburgh felt satisfied that they had nothing to fear from the inquisitorial visit which they were about to receive, and it will be seen that their prophecy was amply fulfilled. The Reports, however, that were drawn up by Messrs. Sykes and Forbes, and which were laid before the LORDS of the TREASURY, as the result of their inquiries, were—in the same spirit of equity in which the Commission had been originally acceded to—transmitted by their Lordships to the Commissioners of Stamps, for any observations upon them which they might think it necessary to suggest to their Lordships' consideration. It was in consequence of the Reports being thus transmitted, that the following remarks were offered upon them :—

Stamp Office, Feb. 13, 1822.

MY LORDS,

As the information which I obtained when commissioned by your Lordships in the year 1818 to inquire into the conduct of Mr. Bremner, the

Solicitor of Stamps, and into the general Management of that Department, has, in the opinion of my colleagues, given me peculiar means of forming a judgment on many particulars adverted to in the Report of the Commissioners of Inquiry, they have expressed a wish that I should submit such remarks as may occur to me in a distinct Report. If in so doing I appear to go a little out of the common course, your Lordships will ascribe it to a willingness on my part, that any observations which I may make should go before your Lordships without that weight which the collective signatures of the Board would attach to them, and that they may come to the judgment of your Lordships unsupported by any other authority than they may derive from their bearing on the facts or statements to which they relate. If I have frequent occasion to differ in opinion from the Commissioners of Inquiry, your Lordships will do me the justice to recollect, that I was deputed, as far as it respects the Solicitor's Department, to institute *the same course of investigation*, and that *my* statements stand diametrically opposed to those which are here presented to your Lordships; and it was to be expected by the Commissioners themselves that I should endeavour to satisfy your Lordships, that the account I had reported was warranted by inquiry, and supported by facts. Their Report is in the nature of a public docu-

ment. If the official character of Mr. Bremner, as there pronounced upon, be correct, the opinion which I have expressed on the same subject must be wholly unfounded. I have no wish that any unfavourable report of mine, either of Mr. Bremner or of his Department, should prove to be true, but I am interested in not having it undeservedly exposed to the suspicion of being false.

That I may avoid extending these observations to a greater length than is absolutely necessary, I have confined them to those particulars to which it appears most essential to direct your Lordships' consideration, extracting from the Report the passages immediately referred to :—

"From the examination of the persons employed in this Department, and of the documents produced, as also from the concurrent opinion of persons to whom Mr. Bremner has been very well known, we believe that he has executed the duties of his office with *strict integrity*, and that no charge can be made against him, either of extortion or dishonesty."

I would here submit to your Lordships, that it is not by the examination of the persons employed in the department itself, that it can be expected to ascertain, whether the business of that department has been well or ill conducted. It is not to be supposed that either the principals or clerks will give evidence against themselves; it is obviously their interest to represent every thing in the

best light, and to conceal all mismanagement. The Commissioners of Inquiry state, that they examined the documents produced, but they make no mention of what those documents were; and they state further, that they form their opinion of the integrity of Mr. Bremner's official conduct from the concurrent opinion of persons to whom Mr. Bremner has been very long known; but they wholly omit to state the name of any person from whom such testimony was obtained; neither your Lordships, therefore, nor the Board of Stamps, can judge of the weight which any such opinions may deserve, and still less, whether the Solicitor of the Stamp Office in Edinburgh had faithfully discharged his official duty! because this can alone appear from an examination into the management of his office —it is a question of fidelity, fitness, and efficiency, as a *public* officer, and all testimony to *private* character is here irrelevant.

It must readily occur to your Lordships that the persons who had the best means of judging, and from whom alone any practical and well-grounded opinion could be obtained on this head, were the COMMISSIONERS OF STAMPS, who, I submit, ought to have been the persons first consulted; but from whom no opinion has been asked, nor a single inquiry made.

If by *integrity* is here meant uprightness and accuracy in official pecuniary transactions, the admission which the Commissioners state themselves

as compelled to make certainly furnishes no ground for that opinion. The Board can only judge whether a public officer is a man of integrity by his fairly accounting for the sums of money he from time to time collects, and by finding that a regular entry is made by him of all sums received, and of all sums paid, and that the vouchers preserved of such receipt and expenditure will, at any time, show the exact balance in hand when an account is called for. But how does the case stand with respect to Mr. BREMNER?

"We are compelled to say that his accounts have not been, and are not, kept with that order, distinctness, and accuracy, which ought to be observed by a public officer. There is no book showing at one view the state of the prosecutions, nor is there any regular cash-book; the receipts of money are merely shown in the margin of the entries, relating to any particular proportion; and it would be very difficult for any person, except the person making the entries, to draw from them a proper state of costs. It is absolutely necessary that a very different plan of keeping those accounts should be adopted."

Now I would submit to your Lordships, that when a public officer, like Mr. Bremner, in the receipt of vast sums of the public money, in the shape of duties, compositions, and penalties, has never, since his appointment to office, made any entry, in any book kept for the purpose, of the sums so received, and by this means puts it out of the power of the Board, to whom he should render his accounts, to discover either what sums have

actually come to his hands, or what share has been paid to the Informer in each case, or what balance is due to the Crown; such proceeding is not only utterly irreconcileable with professional *integrity* in the conduct of the officer that is guilty of it, but raises a strongly opposite presumption.

When the Commissioners here state that they are compelled to say that Mr. Bremner's accounts are not kept with that order, distinctness, and accuracy which ought to be observed by a public officer, they obviously so express themselves, as to have it understood that his accounts are kept with *a certain degree* of order, distinctness, and accuracy, though not with so much as ought to be observed by a person in his official situation. But I would ask whether they found any accounts that were not the complete *reverse* of everything to which the terms order, distinctness, and accuracy, could attach?—whether any papers deserving even the *name* of *accounts* were produced to them, or which contained any other than loose, disjointed, memorandums of penalties awarded on this and that prosecution, for the *receipt* of which there was no voucher, and of the *appropriation* of which there was no evidence? It is said, there is no *regular* cash-book kept by Mr. Bremner; but was a cash-book *of any kind* produced? The fact is, that there is not only no *regular* cash-book kept, but *no cash-book whatever*. When, moreover, it is suggested, that a different system of keeping the accounts

ought to be adopted, it is obviously meant to be inferred that there is a *system* of book-keeping, though a defective one; whereas, there neither is, nor ever has been, *any system of book-keeping* in Mr. Bremner's office, nor any means, from either book, vouchers, or record, of discovering whether Mr. Bremner does, or does not, account faithfully for the sums of money which, by virtue of his office, are paid into his hands!

I proceed, next, to draw the attention of your Lordships to the subject of the prosecutions for arrears of *Certificate Duty* instituted by Mr. Bremner in 1815, and adverted to in page 15 of the Report.

"There is one of the Solicitor's bills upon which it may be expected we should make some observations. It is the bill commencing in July, 1815, for prosecutions on the Attorneys' Certificate Duties, and amounts to no less a sum than £2,177. These duties were at that time very generally evaded; and very large arrears being due, it was thought right by the Solicitor, with the approbation of the Lord Advocate, to enforce the payment of them, which could only be effected by raising prosecutions for them; accordingly such prosecutions, about 520 in number, were raised."

Had *inquiry* been made into the origin and conduct of this mass of prosecution, it would have led to the disclosure of a system of management that would have sufficiently shown in what manner the public business was conducted in Mr. Bremner's office; it would have appeared that these 520 prosecutions were actually instituted

against Writers of the Signet in Edinburgh, Glasgow, Aberdeen, and elsewhere, without previously ascertaining whether they had taken out their certificates annually or not; but they were all prosecuted *indiscriminately*, as being uncertificated from the first year of their respective admission; and they were left to clear themselves as they could. This is manifest from the document itself, which contains these prosecutions, as well as from the following copies of answers received to a Circular Letter, forwarded since the present Report of the Commissioners of Inquiry was delivered, for the purpose of ascertaining certain particulars connected with the above prosecutions.

[Here follow several letters of complaint, confirmatory of the above, from different Writers to the Signet, which, as they run to some length, are omitted].

These are not the only letters received, stating the same grounds of complaint. It will naturally occur to your Lordships to inquire, how it could happen, that parties should be prosecuted by the Solicitor of Stamps, as having acted *without* certificates, when certificates have been *regularly taken out;* and—what is still more extraordinary, —how it could happen that the LORD ADVOCATE should have awarded penalties, in cases where the offences charged *had never been committed*, and consequently *could never have been proved!* This is a mode of conducting the public prosecutions that demanded examination on the spot; since,

whatever course of proceeding led to so unjustifiable a result, it was of importance that such measures should be adopted, as might protect the public against such unauthorised prosecutions in future.

There is one fact of importance, *which is not noticed in the Report;* but which, being in the knowledge of the Commissioners, ought to have been particularly adverted to, which is, the extraordinary fact of nearly £9000 being awarded by the then LORD ADVOCATE, on these prosecutions, in the year 1815, to be recovered from the respective defaulters. It was surely essential to inquire, why such a mass of arrears was permitted to accumulate, as to make it necessary for him to prosecute to the number of 520 Writers to the Signet, and that too, for acting, ten, fifteen, and even in some instances twenty years successively, *without taking out certificates?* And further, how much of this £9000 was to be considered as *arrears of duty,* and how much as *penalty?* Whether any part of this sum has been accounted for as arrear of duty, and has the Crown's moiety of the penalties been paid over to the proper officer? And further, if only £2,830 has been recovered, what steps have been taken, since 1815, to recover the outstanding arrear of £6000; and if no steps have been taken for this purpose, on what grounds has the recovery of them been abandoned?

With respect to Mr. Bremner's having thus

suffered these offences against the Stamp Acts to accumulate, for which the prosecutions in the year 1815 were instituted, it may be thus accounted for. Mr. Buchan, his predecessor, and whose Deputy he had been for many years, died in 1813. Mr. Bremner was appointed to succeed him in 1814. And in 1815 these prosecutions are commenced, for the recovery of penalties incurred year after year, long previously to Mr. Buchan's death, but for which, had they been *then* prosecuted, the duty, penalties, and costs recovered must have been accounted for to *him;* but the offences were suffered to accumulate, till Mr. Bremner became *himself* Solicitor, and hence proceed these prosecutions in 1815, which, under one head of duty alone, created a Bill of Costs amounting to £2,177.

In the Appendix to the Report is inserted an account of Mr. Bremner's bills, from the 10th June, 1813, to the 11th December, 1818; in this account, as your Lordships will perceive, the amount of the bill for prosecutions in the Attorney's Certificate Duty is £2,177. 0*s.* 4*d.*; the amount stated to have been received by Mr. Bremner is £2,830. 10*s.*; and the balance which is stated as due from him is £653. 9*s.* 8*d.*; whereas the real fact is,—and to this fact I would direct the serious attention of your Lordships,—that the whole of this sum of £2,830. 10*s.* so recovered under these prosecutions is at this mo-

ment *due from Mr. Bremner*, he not being entitled to deduct from it a single shilling of this bill of £2,177. 0*s*. 4*d*. The Act imposing the Certificate Duty directs that penalties shall be recovered with full costs of suit; and the Board, moreover, gave him specific directions on this very point, as will appear by the following extract from their Secretary's letter, dated Nov. 13, 1815:—

"The Commissioners approve of your having taken measures for enforcing payment of the duties on *Attorneys' Certificates*, and desire you will do the same with regard to the Attorneys' Mandates; they also desire, that the defaulters may be made to pay *the costs of the actions brought against them*, and that the *penalties may not be remitted without the knowledge and sanction of the Board.*"

Now, in utter disregard of the provision of the Act, which specifies, that the penalties shall be recovered *with full costs of suit*, the cases were *privately* referred to the LORD ADVOCATE, and the penalties remitted or reduced, *without the knowledge or sanction of the Board;* and Mr. Bremner, without the slightest claim of right, takes the whole amount of the arrears of *duty* recovered, together with the whole of the *penalties*, amounting to this sum of £2,830,—which ought to have been paid over to the Consolidated Fund,—in payment of those very costs which it was his duty to have recovered against the parties, and for which at this moment he stands accountable.

It would have been of advantage had the Commissioners of Inquiry,—Messrs. Sykes and Forbes, —suggested what steps it might be proper to pursue in order to compel a faithful account to be delivered of all duties, compositions, and penalties received, and of vouchers for the due payment of the shares of penalties awarded to the different informers in each prosecution.

I must further observe, that it was not only the Attorneys' certificate duty which he had thus suffered to get into arrear, but every other branch of duty; the Mandate duty,—the Attorneys' admission duty,—the duties on inventories (which in England is the probate duty),—the legacy duty,—the duty on plate,—on licenses,—on patent medicines,—the pamphlet duty,—every other description of duty, was in the same state, notwithstanding that abundant reports of arrears in each were regularly transmitted by the Inspector to Mr. Bremner, for prosecution, without effect. The Commissioners might have obtained evidence of this. The Inspector's Reports, and the Inspector himself, would have afforded information sufficiently conclusive, and the examination of the *interim* Solicitor, during Mr. Bremner's suspension, would have produced ample testimony to the same effect.

There is a circumstance connected with Mr. Bremner's neglect in delivering his bills of costs, which seems to call for explanation on the part of

the Board, because the Report lays much stress upon it as exculpatory of Mr. Bremner's delay; it relates to the bill of costs from June 1813, to July 1814:

"This account, so delivered to the Comptroller, was examined by him, and forwarded to London for the approbation of the Board, on the 12th June, 1818, and returned by the Board to the Solicitor, in August, 1820, with a direction to lay it and the subsequent account before the Deputy Remembrancer of the Court of Exchequer, and the Auditor of the Court of Session."

This bill being detained so long by the Board, seems, in the opinion of the Commissioners of Inquiry, to acquit Mr. Bremner of all subsequent neglect:—

"With regard to the subsequent Bills, *we do not think any undue delay is imputable to Mr. Bremner*, for while the first remained with the Commissioners unsettled, when he might be looking for a statement of it, which would thus ascertain the correctness of the charges made by him, and be a rule for making out the subsequent bills, it was natural for him to wait the auditing of the *first* bill before he furnished any other."

This apology on the behalf of Mr. Bremner is quite inadmissible: Mr. Bremner was bound to deliver his bills *annually*, and the pretext for disregarding this rule of office—that he waited for the first bill being audited before he furnished any subsequent bill—is quite unfounded. It was clearly Mr. Bremner's duty to deliver in the whole of his bills, that the Board might be

enabled to ascertain the balance that was either due *to* him, or due *from* him; because there being no table of fees to govern the charge, the cost of each case could only be regulated by its own circumstances, and a charge allowed or disallowed, as it might appear warranted, or otherwise.

It is therefore no justification to say, that Mr. Bremner naturally waited for the *first* bill, that it might be a rule for making out the *subsequent* bills. It might, with much more reason, have been urged as a ground for requiring *all* the bills due to be furnished before any one was audited, that the Board would then be enabled to guide their judgment in the allowance of particular charges, by the profit of the Solicitor's department taken on a fair average, and which average could not be estimated till the whole bills were delivered in. The circumstances, however, of this bill of costs remaining with the Board from June 1818, to August 1820, which is considered by the Commissioners of Inquiry as removing all blame from Mr. Bremner,—and from which your Lordships are left to infer, that the delay imputed to him by the Board originated with the Board itself,—is capable of the clearest explanation.

In the beginning of the year 1818, I was commissioned by your Lordships to inquire into the conduct and management of his office. While in Edinburgh, I urged the delivery of his bills of costs. I returned to London on the 24th May,

1818; and in June, 1818, this bill of costs, from 1813 to 1814 (the first year of his appointment), was sent up to the Board, and the bills for the subsequent years were stated to be preparing for delivery, and the Board was, of course, desirous to get in the remainder of the bills (especially the next bill for the year 1815), as they could not, with any propriety, pay a balance that might be made to appear on the *first* year's bill of costs, since the *subsequent* bills might show a balance to be due to the Revenue, as in every case judgment has been given for duties, as well as penalties, and Mr. Bremner *had got the whole without account.*

The settlement of this year's bill was still more strongly precluded, by the discovery which occurred in the case of a Mr. Fyfe. The case was this:—Mr. Bremner had, on his own authority, and without the knowledge of the Board, compromised a prosecution against Mr. Fyfe for £50: the informer and his agent had long applied ineffectually to Mr. Bremner for their share of the penalty, but were always sent away with being told, by Mr. Bremner, that he had applied frequently to the Board upon the subject, and had forwarded their petitions, but could obtain no answer. When Mr. Renny, on the suspension of Mr. Bremner, was made *interim* Solicitor, the parties renewed their solicitation on the subject; and on Mr. Renny's applying, on their behalf, to the Board, respecting the facts, it

turned out, that *not one* of the many petitions which these parties had given to Mr. Bremner to be transmitted to the Board had ever been forwarded, although he had constantly answered their solicitations, by affirming that he had submitted them *regularly*, but without effect; and, what is of more immediate importance to the present subject, it was found, on looking into the bill of costs above alluded to, and which embraced the period when the £50 was received, it *did not credit the payment, nor contain any entry respecting it!*

This circumstance sufficiently shows the necessity of waiting the arrival of the remainder of the bills before the balance claimed on this year's bill was discharged. In the December of 1818, Mr. Bremner was suspended from office, and so remained till 22d July, 1819, when he was replaced. On the very day of his restoration to office, the following letter was forwarded to him by the Secretary:—

"July 22, 1819.

"I am directed by the Commissioners to desire you will immediately make out and send up to this Board, without loss of time, your bills of costs to the end of last year.

"I am, &c.

"WM. KAPPEN."

This application produced no effect. The Board waited in vain for twelve months, and at length the following letter was forwarded to Mr. Bremner, by their Secretary:—

"July 12, 1820.

"I am directed by the Commissioners to desire that you will inform them, by return of post, in what state of forwardness your bills of costs now are, that were called for last July.

"I am, &c.

"W. KAPPEN."

Finding it was wholly useless to make further endeavours to procure any further bills, the Board, in the following month, August, 1820, sent the bill of 1814 to the Deputy-Remembrancer in Scotland, to whom they further directed the remaining bills to be referred.

After this statement, it would be superfluous to observe, that it furnishes the reverse of any thing like a *justification* of Mr. Bremner's neglect in delivering in his subsequent bills, as arising out of any neglect on the part of *the* BOARD, as to his bill of 1814.

The next circumstance adverted to by the Commissioners of Inquiry, in defence of Mr. Bremner's delay, in delivering his bills of costs, is quite unfounded.

"The Auditor of the Court of Session has requested, that his taxation of the bill of July, 1814, and the delivery to him of the subsequent ones, may be delayed until he shall have audited a similar bill of Mr. Renny's, who was the general Solicitor during Mr. Bremner's suspension, and is now the Solicitor of the Legacy Department, *whose bill is open to the same objections as were made by the Deputy Remembrancer to Mr. Bremner's bill,* and until the question as to *the propriety*

*of allowing the miscellaneous charges be determined,* it seems *clear* that none *of these accounts can be settled.*"

The objection on the part of the Auditor, as it respected certain charges in Mr. Bremner's bill, was this—that as Mr. Bremner received a fixed salary of £100 a year, for miscellaneous business, he thought him not entitled to make charges which that salary, in his opinion, was meant to include. So far as respected Mr. Bremner's bill, the objection was well founded, but the Commissioners of Inquiry are not correct in stating, that the bill of Mr. Renny, the interim Solicitor, is open to the same objection, because to his bill the objection does not apply. Mr. Renny receives no such salary. On the contrary, we discovered, to our great surprise, that the head Distributor, Mr. Hepburne, *without the knowledge of the Board,* paid Mr. Bremner this salary *during his suspension,* and that the *Comptroller*, Mr. Pender, knowing the salary bill to contain such payment, signed it as *correct!* As this fact was known to the Commissioners of Inquiry, how can we account for their urging the necessity of first deciding on the propriety of allowing the miscellaneous charges in Mr. Renny's bill of costs, before Mr. Bremner's account could be settled? I think, moreover, that this unauthorised payment of the public money, without any previous communication with the Board, deserved their severest animadversion, as showing the utter disregard of autho-

rity, and the absence of all official control with which the public business in the Stamp Office in Edinburgh was conducted; but the Commissioners not only pass it over without remark, but referring to this fixed salary of £100 for miscellaneous business, they report it as their opinion, that it is insufficient, and that he has a just claim to extra remuneration. On this point, it need only be observed, that the emolument of Mr. Bremner's situation, as Solicitor of Stamps, cannot be much below £2,000 a year, exclusive of this annual salary of £100; and that the manner in which Mr. Bremner has conducted the duties of it has been such as, so far from authorising this suggestion of increased reward, would have justified a very different recommendation.

The Commissioners of Inquiry, in further palliation of Mr. Bremner's delay, in not rendering his accounts, represent the Board in London as not having urged him to deliver them:

"From the terms of our instructions, we should suppose that repeated orders had been given to Mr. Bremner by the COMMISSIONERS, to render his accounts; we do not, however, find any such order previous to the delivery of the first account, on the 25th of February, 1818. We have examined all the letters from the Commissioners of Stamps, handed to us by Mr. Bremner, since February, 1814, and the *first* relating to the bills appears to be one from the Secretary to Mr. Bremner, dated 22d July, 1819, desiring him immediately to make out and send up to the Board, without loss of time, his bill of costs to the end of last year."

If, from *the terms of their instructions*, the Commissioners of Inquiry had reason to suppose that orders had been repeatedly given by the Board to Mr. Bremner to deliver in his accounts, in proceeding to ascertain the fact, they should not have contented themselves with the sight of such Letters from the Board as it might please Mr. Bremner to show them, but have requested the BOARD *itself* to furnish them with copies of such Letters (if any) in which such application was made.

The following applications to Mr. Bremner, from the Secretary, on this head, will bear sufficient testimony to his utter disregard of the Board's authority, aud will show that repeated directions *had* been given to him to deliver in his accounts, and that when the Board desisted from further application, it was because they found all application ineffectual.

" 17th March, 1817.

" SIR,

" The Board feel themselves called upon to insist upon your making out your bills of costs in arrear, *forthwith*, and upon your delivering your bills *annually* in future. And the Board, presuming that your bills in arrear must be already in some degree of forwardness, desire to be informed when they may expect to hear of their being delivered to the Comptroller for examination.

" I am, &c.

" WM. KAPPEN."

" April 22, 1817.

" SIR,

" The Commissioners not having heard from you, in answer to my letters of the 17th and 31st of March, on the subject of your *bills of costs*, and of the Legacy Duties payable out of the estate of John Ballantine, deceased, I am directed to desire that you will inform the Board whether the Letters came to your hands, and what has prevented your making some communication thereon.

" I am, &c.

" WM. KAPPEN."

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[Extract of a Letter.]

" 24th May, 1817.

" I am further directed to advert again to my Letters of the 17th and 31st March, on the subject of your *bills of costs*, and of the Legacy Duties payable out of the estate of Mr. John Ballantine, and to express the surprise of the Board at your long neglect in not acknowledging the receipt of those Letters, and giving some answers to them.

" I am, &c.

" WM. KAPPEN."

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[Extract of a Letter.]

" 19th July, 1817.

" I am further directed to take this opportunity of informing you, that the Commissioners are highly dissatisfied that you have not thought proper to answer their Letters of the 17th and 31st March last.

" I am, &c.

" WM. KAPPEN."

I have no wish to do more than to show that the Board actually did all in their power to obtain those bills of costs from Mr. Bremner, and that no reliance was to be placed on any information received *exclusively from him.* I therefore pass from this subject without further observation.

A detailed description is given by the Commissioners of Inquiry of the duties of Mr. Bremner's office; but as this Commission could only be instituted by your Lordships with a view to examine into and correct whatever abuses might be found to exist in the Stamp Department in Scotland,—to report the description of the duties of the SOLICITOR'S Office, as given by the *Solicitor* and his *Assistant,* not only contributes nothing towards effecting the object intended, but leaves it wholly unattained. It is not what the duties of the Office *are* that is the subject of investigation, but how those duties are practically discharged, and what foundation there exists for charges of mismanagement? No service can be rendered to the revenue, but by tracing out the abuses to be reformed, and by suggesting the readiest and most effectual corrections. This minute enumeration of the duties of his office, as here reported, being received from Mr. Bremner himself, I should have offered no observation upon it; but there is one part of the detail which I think should have arrested the attention of the Com-

missioners, as leading to important particulars of inquiry. It is described as a part of the duty of Mr. Bremner and his assistant :—

" To attend daily at the office, from between nine and ten in the forenoon till three in the afternoon, and from six to nine or later in the evening; to give legal advice in all legal matters as to stamps; to answer the very numerous (frequently twenty) daily inquiries made as to the appropriate Stamps necessary for various instruments, and to answer letters from the country upon the same subject."

If Mr. Bremner means it to be understood that his office is at all open to the public in the *evening* for despatch of business, he states what a very little inquiry would have disproved; but if it be true that he has nearly twenty *daily* applications from persons in EDINBURGH *alone*, besides letters of application *from the country* to inquire what are the appropriate Stamps for particular instruments, your Lordships cannot but be forcibly struck with the expense and trouble that must be occasioned to the public in Edinburgh and throughout Scotland, by the necessity of thus recurring perpetually to the Solicitor, before they can fill up an instrument, to know what is the proper stamp they should affix to it! All this is a proof of a defect somewhere, and of a defect calling most imperiously to be remedied. The expense of the parties must be considerable, since, for every one of these consultations Mr. Bremner charges the

inquirer 6*s.* 8*d.* or 13*s.* 4*d.*, and sometimes more; and it should be remembered that the additional schedules to the Scotch Stamp Acts were framed *by Mr.* BREMNER *himself*, who was sent for to London to assist the then Chairman, Mr. Neyle, with that local and professional knowledge which he was supposed to possess; and if they were so ambiguous and unintelligible as this *daily* resort to him for instructions proves them to be, your Lordships will perceive the necessity of their being, as soon as possible, revised, for the purpose of rendering them explicit and effective.

The Commissioners of Inquiry express it as their opinion, that the power which should be exercised by the Solicitor is *too much limited!*

"We must say, that we do think that it would be for the advantage of the public service, if he were invested with more ample power in his own department than he is permitted to exercise at present. He ought to be allowed to institute prosecutions in such cases as *he* considers proper, without the necessity of always *applying to the Board* for advice, as it is our opinion that a local knowledge of circumstances, to be acquired only on the spot, is often of much importance in determining on the propriety of instituting or abstaining from instituting prosecutions."

Now, with regard to *the power* which the Solicitor possesses, it is fully adequate to every exigency in which it can be made available to the public service. If a Solicitor of Stamps in Scotland possess a due share of legal knowledge, com-

bined with vigilant superintendence and sound integrity, he possesses already as much power as will enable him to exercise all these qualities to the utmost. That he ought to be allowed to institute prosecutions in such cases as he considers proper, without the necessity of always applying to the Board, is an opinion from which we differ fundamentally. The irregularity which has been found to prevail to such an extent in the Solicitor's Department, would certainly not induce the Board to place that Department *more* beyond its control, by giving him more ample power, but quite the reverse; and therefore it was, that, by a recent order, no prosecutions were permitted to be instituted but under the Board's direction—in the first place, that the public might not be harassed by prosecutions in improper or trivial cases; and in the next place, that they might know the actual number of prosecutions instituted,—the penalties awarded in each,—the shares payable to informers; —and further, to prevent all *compromises*, which in prosecutions commenced without the Board's authority might be concluded without their knowledge.

It is the more remarkable that this increase of power should be recommended by the Commissioners of Inquiry to be given to the Solicitor, because, in a former part of this very Report, they state that—

"*Until July or August*, 1819, soon after Mr. Bremner's

reinstatement, the Solicitor always proceeded *at his own discretion,* taking occasionally the advice of the Crown's Counsel in cases of difficulty; he *now,* however, *by express direction of the Board,* lays all cases before them, and institutes no proceeding without their authority."

It was clearly to be inferred from this, that the abuses which the Board perceived might be practised by suffering a Solicitor to institute prosecutions unknown to them, and at his own discretion, had led them to adopt the remedy adverted to. Instead, therefore, of extending the power of the Solicitor, and re-investing him with that authority to institute prosecutions which they had so recently withdrawn, the Board would be rather disposed to consider by what means the Solicitor's Department in Scotland could be brought under its still more immediate superintendence, and whether regulations might not be devised which should make it impossible that the Solicitor should materially neglect the duties of his office without its being perceived, or commence or compromise prosecutions without its being known, or recover the public money in any shape without the Board having the means of bringing him promptly and explicitly to account.

Messrs. Sykes and Forbes recommend that "the offices of Solicitor of Stamps and Legacy Duties should be *consolidated.*"

As it must be well known to them that the Board had but very recently separated these two

offices, from a conviction that the public duties of each would be more effectually discharged, and the public revenue much better collected, it could hardly be expected that this proposal could meet its concurrence; indeed, the opinion itself must be considered as somewhat premature, inasmuch as it was formed and reported by Messrs. Sykes and Forbes, before they had made any inquiry into what were the duties of the Legacy Department, and before the arrival of Mr. Campbell had afforded them any opportunity of consulting with him upon the subject.

The Commissioners of Inquiry report it as their opinion—

"That a superior officer to any at present in the department would be useful; but it would be chiefly as a check or control over the Solicitor, or as an adviser with him in the business of his department."

There seems no ground to consider this proposed new appointment as in any manner necessary. It seems obvious that a Solicitor of Stamps in Edinburgh can require no such check or control as is here suggested; but upon the supposition of his dishonesty, and with this presumption against his character, he is unfit for the office:—nor can he require an adviser with him in the business of his department, but on the supposition of his incompetency, in which case he is not qualified for it. To recommend, moreover, the appointment of an officer as a check or control over the Soli-

citor, *or* as an adviser with him in the business of his department, appears somewhat contradictory. If he is to act as a Comptroller, it cannot be his office to *advise*, nor as an Adviser to *control;* and if the superior officer to be appointed may act indifferently in either capacity, it is quite manifest that such an appointment must be superfluous. Indeed it seems obvious, that the result of it would be, either wholly to supersede the authority of the Board in London, or greatly to impede the exercise of it, and by removing the responsibility from where it ought to rest, defeat the intention of the Legislature, and embarrass the public service.

I have the honour to be, my Lords,

Your Lordships' most obedient Servant,

JAMES SEDGWICK, Chairman.

To the Right Hon. the Lords Commissioners
of his Majesty's Treasury.

## LETTER VII.

SIR,

The space unavoidably occupied by the remarks submitted to the Lords of his Majesty's Treasury, on the Reports of Messrs. SYKES and FORBES, obliges me to postpone my observations upon them as connected with *your* Commission of Revenue Inquiry, and the common object which they are alike intended to effect. I shall only notice at present, that Messrs. SYKES and FORBES, while they affirm Mr. BREMNER to be a person of "*strict integrity*," and describe the rest of the officers concerned in the system in *Edinburgh* as free from all imputation, are no sooner constrained to admit the existence of any irregularity, than they boldly and at once score it down to some misfeasance or neglect of their superiors in *London*, and there they leave it. *Your* Reports, as CHAIRMAN of the PARLIAMENTARY Commission of Inquiry, follow in exactly the same track.—"Our general inquiries in SCOTLAND," you say, "*satisfied us* that the superintendence exercised by the Board in LONDON, over *the collection of this branch of the Stamp Revenue*, was neither regular nor effectual."—That it was not *effectual* is most true; but while you avered this, no one knew better than yourself what counteractive influence it was that rendered it *ineffectual*.

My last letter embodied the remarks offered to the Lords of the Treasury, on the Report which related to the office of Mr. Bremner, the SOLICITOR of Stamps in Edinburgh. The following are the remarks which were submitted in like manner upon the Report on the department of the Head DISTRIBUTOR, Mr. Hepburne, and of Mr. Pender, the COMPTROLLER.

Stamp Office, March 1, 1822.

MY LORDS,

The present Report is drawn up separately on the same grounds, and for the same reasons, stated in the preface to the former, respecting the Solicitor's department. Upon this head, therefore, I shall abstain from offering any additional observation.

The present Report of the Commissioners of Inquiry commences with the office of Mr. Hepburne, the Head Distributor and Collector. It seems difficult to peruse the detail which is given of the system of management adopted with respect to the consignment of Stamps, without perceiving, that under the semblance of check and control, there is an interference on the part of the Comptroller with the duties of the Head Distributor, that is not merely superfluous, but most singular. It is stated that—

"When any Sub-distributor in the country wishes for a supply of stamps, he applies by letter to the COLLECTOR, speci-

fying the particular kind of stamps wanted, and the quantities. He at the same time forwards a duplicate of this letter to the COMPTROLLER, who on reference to the books, being satisfied that the Sub-distributor is accounting properly for the stamps already in his hands, gives a warrant or order on the Collector to issue the stamps required."

But where is the necessity that Mr. Pender, the Comptroller, should require this duplicate letter? It is surely for the Head Distributor to satisfy himself that his agent accounts truly for the supply he last received, because he acts upon his own responsibility, and is the person accountable to the public; he is therefore to forward the supply required or not, according as he may think the former supply sufficiently accounted for, or otherwise.

But that Mr. Pender, the COMPTROLLER, should be the person, who, on reference to the books, and on expressing himself satisfied that the Sub-distributor is accounting properly, is to issue a warrant or order to the HEAD DISTRIBUTOR to send the supply required; seems to be a very extraneous mode of proceeding, and shows the Comptroller to be acting quite out of the sphere of his duty. It appears, that in receiving this order from the Comptroller—

"Mr. Young (the clerk) then sends the stamps, making out, at the same time, an invoice or consignment, which he first hands to the Comptroller, who compares it with his order

and warrant, and enters it as a charge against the Sub-distributor in the country consignment book, and also in the general ledger, or check ledger of warrants, in his office, as a discharge to the Collector to that amount."

But it is quite clear that no charge can be officially entered against a Sub-distributor but in the office of the Head Distributor himself; he is accountable only to him, and no such entry as is here spoken of confirms any charge against him; nor can any entry of a consignment in any book, kept by the *Comptroller*, discharge the *Collector* to that amount. In fact, there is a confused intermixture of the two departments of Head Distributor and Comptroller, which cannot but be considered as extremely objectionable, for reasons which will be stated in the progress of these observations.

The daily ready money sale of stamps at the Head Office seems to be conducted in a very exceptionable manner, both as it affects the responsibility of the Distributor, the interest of the revenue, and the accommodation of the public. The Report describes it thus—

"With regard to the money received in the Sale Office, the three Clerks in that department account to Mr. Gray. On Friday they make an interim payment of the sums received by them during the week, for which they receive an acknowledgement, and on Monday they make out a detailed account of the stamps sold, and the cash received during the week, which is first sent to the Comptroller, who examines it to as-

certain whether the cash corresponds with the stamps sold, and then enters it in the Cash Book, Check Ledger of Stamps, and General Ledger, kept in this office, as a charge against the Collector, and a discharge to the Clerks in the Sale Office; the Comptroller then certifies the account by signing it; it is then carried by the Clerk who is to pay the money, to the Collector's Office, when the money is received, entered in the cash book, as a charge against the Collector, and a discharge to the person paying, and the receipt is then returned to him as his voucher of having made the payment."—

The whole of this statement clearly demonstrates that the office of the Head Distributor is,—in the hands of Mr. Hepburne,—a mere sinecure. The Clerks in the Sale Office, it seems, account for all the money received to Mr. Gray, Mr. Hepburne's first Clerk; the entry by the Comptroller in his cash-book forms the charge against the Collector, and is a discharge to the Clerks in the Sale Office, for the money from time to time received. All this intricacy of check and counter check in Mr. Pender's Office, which is meant to have the appearance of a most rigid and punctilious control, is, in reality, neither more nor less than *the department of the* HEAD DISTRIBUTOR *executed in the Office of the* COMPTROLLER. This will appear manifest on following the statement further into detail.

In the first place, how is it that the Clerks in the Sale Office, in the daily receipt of money amounting to £130,000 annually, are made to account to the Distributor's *Clerk* (Mr. Gray)?

Why do they not account to the Distributor *himself*, if he discharges the duties of his office, and if he is for that purpose, as the Report states, "in daily attendance?" He is personally responsible for all stamps sold, and for all money received in the Sale Office, and ought, therefore, to be the person to whom they should account. The Report states—

"That the payments of cash, of whatever kind, are daily entered in the cash-book, kept by Mr. Gray, and that he credits himself with all payments made by him."

There is a great apparent irregularity here, which requires explanation. As these disbursements must be made out of the Stamp Duties, it ought to appear of what nature they are, and some estimate given of their amount, as Mr. Gray, the first Clerk, credits himself for the total of such payments of cash of whatever kind.

Now, nothing can be more manifest than that all such cash payments made by Mr. Gray, as *Clerk* to the Head Distributor, if made by his direction and under his authority, ought to be placed to the credit of the *Head Distributor*, and not placed by the Clerk to *his own credit.* In fact, judging by the system of management, as set forth in this Report, the Head Distributor, who,—in every thing connected with the money received in payment of the Stamp Duties,—should be the efficient and leading Officer, seems actually super-

seded both in the office and authority by his first Clerk and the Comptroller. For not only does Mr. Gray credit himself for all payments of cash, of whatever kind, but the Report states—

"That the payments made by Mr. Gray to the Bankers with whom Mr. Hepburne lodges the money are entered to his credit in the account, and the Bankers' receipts are weekly presented to the Comptroller, who retains them, marking his initials in Mr. Gray's book, as a discharge to Mr. Gray."

It were to be wished that the Commissioners, Messrs. Sykes and Forbes, had inquired why the public money was not lodged in the name, and entered to the credit of Mr. Hepburne himself; and also, why the Banker's receipts should be given to the *Comptroller*, and retained by *him*, instead of being given, as they ought to be, by Mr. Gray to the *Head Distributor*, to be kept by him as vouchers from time to time deposited? The circumstance of the Comptroller marking his initials in Mr. Gray's book, as a discharge to Mr. Gray, called for particular explanation, for that Mr. Pender, the Comptroller, should not only retain the receipts, which ought, in the very first instance, to have been delivered over to Mr. Hepburne, the Head Distributor, but that his *initials* only should be deemed a sufficient discharge to Mr. Gray, is, on the face of it, a most extraordinary course of proceeding. If any voucher, as a

discharge for money paid, required the signature of a Comptroller, his name *at length* should be subscribed to it, not his initials. How, moreover, can the Comptroller discharge the Head Distributor's Clerk? Suppose a banker's receipt to be lost, and that Mr. Gray, for instance, as clerk to Mr. Hepburne, had received £10,000 to be deposited at the banker's, if an entry of £9,000 only appears in the banker's book, Mr. Gray would, of course, be called upon to produce the banker's receipt, as a proof of £10,000 being the sum actually paid; his receipt, therefore, it is manifest, ought to remain with him, or rather with his principal, the Distributor, because, if the *Distributor* had lost or mislaid it, Mr. Gray, as to *him*, would stand exonerated; but having parted with it to the *Comptroller*, if it be lost from his custody, who becomes liable? Will the *initials* of the Comptroller in Mr. Gray's cash-book discharge Mr. Gray? Clearly not. But in what condition does all this place the *Distributor*? He is unable, of course, to produce a receipt which never was in his possession, and yet he is liable to make good the sum of £1,000, which appears never to have been paid over. It is difficult to conceive a system conducted with more irregularity and confusion than is here exhibited, and it seems quite clear that the interest of the Revenue, as well as the personal interest of Mr. Hepburne and of *his*

*sureties*, require that it should be conducted in a very different manner.

The duty of Mr. Plimer, the third Clerk in the Head Distributor's office, is thus stated :—

" His duty is to collect the different newspapers published in Scotland, to count the advertisements in each, which he enters in a book called ' The Newspaper Advertisement Book,' from which he makes up a quarterly account against each printer, which is examined and checked in the Comptroller's Office, where a similar account is also kept. This account is then returned to the Collector's Office with an intimation of the day fixed by the Comptroller on which payment is to be made to the Collector, and when the money is received by Mr. Gray, the receipt granted by him is also entered in the Comptroller's book, not merely as a discharge to the person paying the same, but also as a charge against the Collector."—

When Messrs. Sykes and Forbes, as Commissioners appointed to inquire into the conduct of the Stamp Department in Scotland, report in detail what that system of management *is*, and report it without any remark, they must be considered as approving it; and yet it seems difficult to conceive any course of official proceeding that furnishes, from its very statement, more abundant evidence of its own incorrectness and insecurity. It can certainly not be within the province of the COMPTROLLER to fix the day on which the payment of these, or any other duties, shall be made to the COLLECTOR. These payments ought either

to be periodical and regular, according to the prescribed rules of the office, or if circumstances do not admit of this, it should be in the discretion of the COLLECTOR, and of him alone, to fix the day for payment of the duties which it is his office to receive. The consequence of the day of payment being fixed by any other person is obvious: if the *Comptroller*, for example, should fix the 8th of April for the payment of a quarterly account, and the party should either abscond or become bankrupt on the 6th, would not the Collector's *sureties* hold themselves exonerated by this act of the Comptroller, who *officially* had fixed the 8th as the day of payment to the Collector? This interference on the part of the Comptroller with the responsibility of the Collector is most irregular and pernicious. Mr. Hepburne's situation is one of great public trust, but at present, from the perpetual interposition of Mr. Pender, it is difficult to discover from the Report where the responsibility rests. In the very passage to which I am now drawing your Lordships' attention, it is stated, that "when the money is received by Mr. Gray, the receipt granted by him is entered in the Comptroller's book, not merely as a discharge to the person paying, but also as a charge against the Collector." In the first place, as these duties are paid at the office, why are they not received by the Head Distributor himself, and the receipt granted by *him*? They are paid only quarterly, and it is

quite clear that *his* receipt for the duties is the proper official voucher to the party paying them. The entry of the receipt in the *Comptroller*'s book is no *discharge* to Mr. Gray, the Collector's clerk, nor is it any *charge* against the Collector. In fact, the whole management of Mr. Pender's office seems to be one continued trespass on the duties of Mr. Hepburne's department, and to interfere with his liability and that of his sureties, without affording any check, that in the slightest degree contributes to the security of the Revenue. The more closely this is examined, the more strongly will this observation be confirmed.

Proceeding to the detail of the manner in which the business of the office for the daily sale of Stamps is conducted, which is under the same roof, and is called "The Office of Distributor for Edinburgh and Leith,"—I find the same system of interference, on the part of Mr. Pender, prevailing in every part:—

"When any of the Clerks wish a supply of stamps, they make a written application to the Collector, and at the same time present a similar one to the Comptroller, specifying the quantities and kind of stamps wanted. The Comptroller examines the account kept in his office for the Clerks, and if it appears to *him*, that such a supply is requisite, he makes out a warrant upon the Collector, to furnish the stamps."

But in what manner must the business of the Collector's department be conducted, that he should not *himself* be enabled to ascertain whether

the stock of stamps, supplied to the Clerks in the Sale office, requires to be renewed?—He, surely, ought to be able to inform himself of this by referring to his own account of stamps of each class delivered out, as by comparing this with his cash account of stamps sold, the stock on hand of each class of stamps should immediately appear, and it is in *his* discretion, and in his alone, to judge whether a further supply is required or not.

That Mr. Pender, the Comptroller, from accounts kept in *his* office, should make out a warrant upon the Head Distributor, to furnish stamps to the Clerks in the Sale Office, when it appears to *him* necessary, is such an utter inversion of all regularity, as carries its own comment along with it.

I come now to speak of *the profit derived from interest of the public money.* It was to be presumed that this, at least, would have been pointed out by the Commissioners of Inquiry, as an abuse to be rectified, and not adverted to *as if it were among the recognised and established emoluments of office.*

When I was in Edinburgh in 1818, Mr. Hepburne, anticipating, no doubt, that the fact would come to my knowledge, sent me a letter, informing me; that he derived a certain emolument from the interest of the public money, and he inclosed a statement of the annual amount from 1812 to 1817. Being commissioned to inquire into the conduct of the *Solicitor*'s department, and having

besides fully sufficient to occupy me, I stated to him that I should state the contents of his letter to the Board, which I did, leaving the measures which it might be thought expedient to adopt, to be considered, when a general revision of the whole Stamp Department, in Scotland, should be entered upon, which, I had reason to expect, would soon be the case.

In reply to a letter, written to Mr. Hepburne, inquiring whether any emolument was derived by him from the public money, between the period of its receipt and the remittance, he writes thus:—

"Stamp Office, Aug. 6, 1821.

"HONOURED SIR,

"In compliance with the order in your Secretary's letter of the 26th of July, I inclose a note of interest accruing to me on the public money, which remains in the hands of my bankers, between the 5th of one month, and the 5th of the next, the monthly period to which the public account is made up, and the cash is remitted within two or three days (at most) thereafter, monthly. Every half year my Banker sends me his cash account of the public Revenue, in which is inclosed the balance of interest due to me; which interest was, when my salary was fixed in 1810, distinctly understood to form part of the emoluments of the office, and considered as by no means inadequate for such a responsible situation as that of Head Collector of a Revenue to Government of nearly half a million of money per annum, and collected, I will venture to say, as far as my department is concerned, with less expense to the public, than any Revenue of equal magnitude under Government.

"I have the honour to be, &c.

"ROBERT HEPBURNE."

" Interest of money deposited in the hands of Sir William Forbes & Co. from

| | | | | |
|---|---|---|---|---|
| December 1811, | to December 1812 . . . | £423 | 1 | 3 |
| Do. . . . . 1812, | to Do. . . . 1813 . . . | 447 | 11 | 0 |
| Do. . . . . 1813, | to Do. . . . 1814 . . . | 450 | 15 | 6 |
| Do. . . . . 1814, | to Do. . . . 1815 . . . | 565 | 0 | 4 |
| Do. . . . . 1815, | to Do. . . . 1816 . . . | 510 | 17 | 8 |
| Do. . . . . 1816, | to Do. . . . 1817 . . . | 546 | 8 | 0 |
| Do. . . . . 1817, | to Do. . . . 1818 . . . | 561 | 9 | 0 |
| Do. . . . 1818, | to Do. . . . 1819 . . . | 541 | 4 | 8 |
| Do. . . . . 1819, | to Do. . . . 1820 . . . | 523 | 12 | 5 |
| Do. . . . . 1820, | to June . . 1821 . . . | 273 | 4 | 9" |

Mr. Hepburne, it will be observed, in the above letter, states, that the *interest* of the public money was *distinctly understood* at the time his salary was fixed in 1810, to form *part of the salary of his office*. Now the Board would, no doubt, be strongly open to censure, if, after having at that time procured a *fixed* salary to be granted to Mr. Hepburne, in lieu of *all* allowances, they had knowingly permitted this worst source of emolument to continue, and it would also appear singular, that the Board should gravely *inquire* into a fact, which is affirmed as being within their knowledge and approval. The following particulars will put the case before your Lordships in the shape in which,—to avoid misconstruction,—it ought to have been stated by Mr. Hepburne.

In Aug. 1810, the period referred to by Mr. Hepburne, an account of the salaries, poundage, and extra allowances of the Officers and Clerks of

the establishment in Edinburgh was laid (at their special desire) before the Lords of his Majesty's Treasury, which account had been procured from the respective officers by the Board, with a view to the abolition of all such allowances of whatever kind, and giving a fixed salary to each officer in future. Mr. Hepburne himself proposed to the Board, that his future salary, *in lieu of all former allowances*, should be £850, which was accordingly recommended by the Board, and acceded to by the Treasury. In the Board's Report to your Lordships on this subject, on the 18th August, 1810, it is stated that

"Mr. Hepburne, the Collector, informed the Board, in a separate letter, that in fixing his own salary, he had not grounded any claim on the emolument he had enjoyed arising from the interest of the public money, while lying in the banker's hands between the remittances; that those balances were reduced by the change lately ordered to be made in the period of remittances, which are now made a few days after the accounts are closed in the beginning of each month, instead of at the end of it as formerly, and that the profit of interest had always been possessed by the Head Collector, and considered as a fair equivalent for the risk incurred, but which, he says, he must submit to lose in consequence of the late regulations of the Board respecting the remittances."

Without going at all into the question whether Mr. Hepburne was *entitled* to receive interest upon the public money, it is quite clear, that when he thus stated that "*he must submit to lose*

*it, in consequence of the late regulations respecting the remittances,*" he led the Board to conclude that their regulations had had the effect of cutting off for the future this source of emolument, whereas the fact was *not* so; the *means* of obtaining interest from the public money remained as before, and to as great an amount as ever, as appears by the account now produced by Mr. Hepburne himself; his thus affirming that he must submit to the loss of it could therefore have no other object but to silence all future inquiry on the part of the Board as to this illicit source of profit, they having been thus misled into the belief that it was *at an end.*

I now come to the subject as adverted to by the Commissioners of Inquiry.

" It is the practice of Bankers in Scotland to allow interest at the rate of 3 per cent. deposited with them in a current or cash account, and this advantage he derives from the intermediate deposit of the money with the bankers, from the time he receives it till he remits it to London.

" We called for copies of the cash account furnished half-yearly to Sir W. Forbes & Co., for the last five years, which were accordingly produced to us. From these it appears, that the allowance of interest on the money deposited with them for the five preceding years is as follows:—

| | | | |
|---|---|---|---|
| " In the year 1816, it is . . . . | £510 | 17 | 9 |
| 1817, . . . . . | 546 | 8 | 2 |
| 1818, . . . . . | 561 | 9 | 0 |
| 1819, . . . . . | 541 | 4 | 0 |
| 1820, . . . . . | 523 | 12 | 5 |

"The sum annually remitted by the Collector always exceeds £400,000; last year it amounted to £447,250."

The dealing with the public revenue as if it were personal property, and placing it in a Banker's hands at interest, is an indirect source of emolument of all others the most indefensible and the most illegal. Even if it were not received,—as in the present instance it is,—under circumstances of peculiar aggravation, the practice is in every point of view so improper as to make it a prominent feature of abuse in any office in which it prevails. Messrs. Sykes and Forbes, however, not only abstain from *condemning* it, but they immediately proceed to show by what mode of management this source of profit *might have been increased.*

"We think it our duty," say they, "to remark, that if the Sub-Distributors had been instructed by Mr. Hepburne to make their monthly remittances to him soon after the 8th of each month, when the monthly remittance is made by him to London, the sum in the Collector's hands on which he could draw interest would be greater than it is according to the present system; for these remittances do not come into his hands till about the first of the subsequent month, so that instead of having nearly a month's interest upon the sums remitted monthly by sub-distributors, he only draws interest from the 1st to the 7th, when the remittance to London is made. Where the sub-distributors remit once a fortnight, interest for an *additional* fortnight on their remittances also *might* have been obtained, by instructing them to make their remittances at a different period from what they now do. We make this remark, be-

cause it appears to us to be but fair to notice that *no undue advantage is aimed at* in the intermediate deposit of the money."

It is to be regretted, that these Commissioners of Inquiry should thus give their sanction to the practice of a Public Accountant vesting the public money at interest, for his own emolument, as no practice can be more productive of mischief, in all directions, or can more require to be suppressed.

It is urged that Mr. Hepburne only draws interest from the 1st to the 7th, instead of contriving, as he might, to draw nearly a month's interest. But, had the Commissioners pursued even this fact through the course of inquiry to which their own statement of it leads, they would have arrived at a result which it would have been of considerable importance to have laid before the view of your Lordships. It appears, for instance, that the average emolument derived by Mr. Hepburne, from the interest of the revenue, is rather more than £530 per annum, to produce which, at three per cent., there must always be an outstanding balance of £18,000, during the whole of every year: but, if he draws interest only from the 1st to the 7th of every month, there must be always in the hands of the Bankers an average sum of £72,000 during that period of every month, to produce the above annual interest at three per cent. There is here much that calls for explana-

tion. It betrays a system of malversation in office with respect to the profit derived from the public revenue, which required to be very differently dealt with than by showing *in what manner it might be extended.*

Had the Commissioners expressed their disapprobation of this practice of drawing interest from the public money, as being pernicious to the interest of the revenue, and prejudicial to the public service, and on those grounds had recommended its discontinuance, it would have been a sufficiently mild mode of getting rid of it; but, far from this, they proceed to put it to your Lordships whether it was not to be considered as an allowable and authorized remuneration?

"Mr. Hepburne states to us, that, when the poundage, which he formerly had as a part of his salary, was taken away in 1810 (at which time his salary was fixed at its present amount, namely, £850 per annum), it was known that he had some advantage from the money coming into his hands progressively, during the period between each monthly remittance."

This is so worded as to be *literally* true, though the *inference* meant to be conveyed is absolutely false. It was known to the Board, no doubt, at *that* time, that he derived interest from the public money, because Mr. Hepburne informed them of it; but a fixed salary had been given in lieu of all allowances, and the Board, as I have just shown, had been led to believe that their regulations, with

respect to the remittances, had put an end to it. *All this is suppressed,* and as the Commissioners made no inquiry beyond the statement they received from Mr. Hepburne himself, it only serves to give effect to his misrepresentation, and to induce your Lordships to conclude, that the Board not merely knew in 1810, that he received interest from the public money, but that they knew that he continued to receive it from that time to the present, which, in fact, they did *not* know, nor had any reason to suspect.

"It remains for the consideration of the Lords Commissioners of the Treasury, whether or not the salary, with the additional advantage arising from the interest allowed by the bankers, be too great. *Before deciding on this,* it must be taken into view, that Mr. Hepburne is responsible for every Sub-distributor in Scotland, amounting in all to twenty-five, also for three Clerks in the Sale Office, and the Clerks in the Collector's office; that this responsibility is not a nominal risk, as he lost about £800 by the insolvency of Mr. Gray's predecessor; that he remits annually about £400,000 of revenue; that he has found security to the amount of £70,000, and further gives his own bond for £100,000, and that the stock of stamps on hand is generally above £400,000, without which, he would be unable to afford proper supplies, as required, to the various districts in Scotland.

"Upon this point we are not called upon *by our instructions* to offer any opinion, and we, therefore, *refrain from doing so.*"

The Commissioners of Inquiry, however, have not failed to manifest sufficiently which way their

opinion inclines, and to urge whatever consideration they thought might induce your Lordships to confirm that opinion.

Whether the placing the public money out at interest, for his own advantage, is a shape in which a public Accountant ought to be remunerated, is a question which cannot be brought before your Lordships with any doubt as to the answer which will be given to it. With respect to the calling for the cash account, furnished by Messrs. Forbes and Co., it will, no doubt, show the amount of interest received from *that* house, but it can show no more; as to any benefit which the Collector or the Comptroller (who keeps the interest cash book) *otherwise* derived from the money, the affair is as much in the dark as ever. There are many ways of occasionally making more of the public money than three per cent. allowed by Messrs. Forbes and Co., besides which, there are *other* Bankers that allow interest as well as them, and it appears by the remittances, that an equal share of the public money is deposited with *five* different banks, consequently, only *one-fifth is* vested in Sir William Forbes's bank. There is no evidence that interest was not received from *the other banks,* or that any inquiry on the subject was made. Indeed, the profit being illicit, there was every inducement to avoid the full amount being disclosed, by reference to the account with Sir William Forbes and Co., the very source of

information, which would naturally be first applied to in the event of its being made matter of official inquiry.

It would have been desirable also for Messrs. Sykes and Forbes to have ascertained to what extent Mr. Pender, the Comptroller, *participated* in the profit of the public money with Mr. Hepburne, as the result of the inquiry would have thrown great light upon the system of management which links the two offices so intimately together, and would explain the cause of the *duplicate* account and *interest cash-book* kept by the Comptroller, all of which tends to confirm an opinion very prevalent throughout the Stamp Office in Edinburgh, that the amount of interest is equally divided between them. But not only is interest thus made by the heads of departments, but it appears that even *the Clerks* in the Office, appointed for the distribution and sale of stamps, derive emolument from the interest of money which they respectively receive, and open the accounts in *their own names*, and this with the knowledge and sanction of the Head Distributor, Mr. Hepburne, and of Mr. Pender, the *Comptroller*. The fact is stated by the Commissioners, but is stated *without comment*, and as if it were among the usual and understood perquisites of office. Of Mr. Neil, the third Clerk, it is said—

"Mr. Neil has been five and a half years in the Office—his salary is £100, and he has no emoluments, except *the in-*

*terest* which is paid him by *the* ROYAL BANK, on the money arising from the sales, which he deposits *previously to his paying it over to the Collector* on the Friday and Monday of each week."

Of Mr. Richards, the first Clerk, it is stated, that

"Mr. Richards deposits the money, which arises from the daily sale of stamps, in the Royal Bank, in a cash account *in his own name*, and receives *interest* at the rate of 3 per cent."

The Report states, that "in the Sale Office, stamps are sold to the amount of £130,000 annually," and yet the Commissioners of Inquiry do not merely report this practice on the part of the Clerks, of receiving interest at the rate of three per cent. without reprobating it, but they find something to say *in its praise*. After stating the amount, they add—

"After all, however, this sum is trifling, and is obviously of too little consequence to be the sole, or even chief motive, for depositing the money in the Bank, and it must rather be ascribed to *the perfect* security which attends it, when there deposited, and the *facility of making weekly payments to the Collector*."

But would not the security be as *perfect*, if the money were paid into the hands of the Collector himself? Can it increase the *facility* of making weekly payments to the Collector, that these clerks should send the daily receipt of cash to the Royal Bank, which they must do at the risk of intrusting some one to carry it, or with the trouble of carry-

ing it themselves, when they might at once pay it over to the Collector, whose office is *under the same roof*? Is it to be justified that the Clerk of a public Accountant should deposit the public Revenue at a banker's, keep the account in his own name, and receive interest upon it to his own use! All this is bad enough in the Heads of the Office, but when it descends to *the Clerks*, it shows the whole system to be corrupt, and that the sub-accountants have a common interest with the principals in concealing the abuses in the profits of which they are permitted to share.

Did not *the* COMPTROLLER, Mr. Pender—who was privy to these illicit transactions, and whose superintendence of the cash concerns of the Office was so vigilant and scrutinizing—did he not know that the money received by the Clerks, in the Sale Office, ought to be accounted for, and paid over by them to the Collector; and that this intermediate use of it, on their part, was a gross abuse of office? And yet those Commissioners of Inquiry report "*the great zeal and unwearied industry of Mr.* PENDER *in the discharge of his duty.*"

So far from according *praise* to Mr. Pender, I should say, that no system of revenue management, however well contrived, can bear up against such counteraction, on the part of the subordinate officers, to whom the important trust is committed, of carrying it into effect. There is no doubt, but

when,—as in the present instance,—*the officers themselves* are alone consulted, as to whether their respective powers are properly exercised, or whether any abuses exist, to which effective checks might be applied, that the inquiry will be answered by an assurance, that these duties are correctly discharged, and that no checks are called for, or can be introduced with advantage. The account which Mr. Pender, the Comptroller, gives of himself and of his department is such as might be expected from one who could not disclose any defects or mismanagement without arraigning himself for permitting what it was his duty to prevent.

"He (Mr. PENDER) considers the checks devised and executed as quite sufficient to control the distribution and sale of Stamps, and remittances of the amount, and thinks no other necessary, or rather, can devise no other; and as a proof of this, he assures us that not a sixpence has ever been lost to the Revenue since he was acquainted with the office. The measures of control are such, that he mentioned to us three separate instances, now many years ago, in which it appeared to him, that the managing clerks of the Sub-distributors were not sufficiently accounting for the stamps in their hands. This was in the districts of Glasgow, Aberdeen, and Ayre. He immediately informed the respective Sub-distributors of the inaccuracy, and upon investigation made by them, it was corrected, but not without loss to the Sub-distributors themselves."

It is not difficult to perceive that the whole department is ill conducted, even from this statement, intended by Mr. Pender to display the good

effects of his vigilance, since it naturally occurs on reading this account, to inquire, how it should happen that there should be this defalcation in the accounts of *three* of his Sub-distributors, and the Head Distributor not to discover it, and that too in the three most important of the districts, GLASGOW, ABERDEEN, and AYRE? It appears, moreover, upon the face of this statement, that the whole of these defalcations were adjusted between Mr. Pender and *the defaulters*, without any communication with the Head Distributor, the person wholly and alone responsible for whatever loss might be sustained; for Mr. Pender, it seems, "immediately informed the Sub-distributors of the inaccuracy, and upon an investigation made by them, it was corrected, but not without loss to the Sub-distributors themselves." The Head Distributor is here not at all mentioned, and seems to have had no more knowledge that these Sub-distributors were not sufficiently accounting for the stamps in their hands, than if it were not within his province. Indeed this very statement of Mr. Pender ought to have led to further investigation, since it must appear very singular, that when the managing clerks of these Sub-distributors in the most important districts are discovered to be "not sufficiently accounting for the stamps in their hands," Mr. Pender should be the person to inform these respective Sub-distributors of what they ought *themselves* to have been the first to

detect! In what manner must the duty be discharged in these extensive districts? It ought, surely, to have been ascertained what were *the deficiencies* of those Sub-accountants, and how they came not to be found out by the HEAD DISTRIBUTOR? Why was not notice immediately given to the Head Distributor, instead of being given to the respective defaulters? How came the investigation to be made by these defaulters themselves, as here stated, and the whole settled by an arrangement between them and the Comptroller, without any part of the transactions being reported to *the* BOARD from the beginning to the end? The opinion which Mr. Pender has delivered to the Commissioners of Inquiry, as to the system of management which prevails in the Stamp Office, is manifestly but very ill supported by the fact which he here states in confirmation of it.

LETTER VII—*Continued.*

I NEXT proceed to the subject of the appointment of Messrs. HATTON and CAMERON. As these two appointments have been from the first most strenuously resisted at the Head Office at Edinburgh by Mr. Hepburne and Mr. Pender; as no effort has been left untried to get rid of them; and as the Commissioners of Inquiry concur in condemning them as ill-advised and unnecessary; I owe it, in justice to myself, with whom they originated, to show the real ground on which they were proposed, and the true cause of that opposition which is made to the carrying them permanently into effect.

I shall now state distinctly the grounds on which I recommended the arrangement objected to, and which the Board, after mature consideration, adopted. When I went to Edinburgh in March last by the direction of your Lordships (to treat for the purchase of the ground behind the New Stamp Office, as well as for the sale of the old premises), it was stated to me by many persons, that the situation of the New Office was such as to require that some accommodation should be provided to enable the mercantile inhabitants of the Old Town as well as the professional persons

in the New Town, to procure stamps without the necessity of going to so great a distance; strong complaints were at the same time made to me from many quarters of the general inconvenience which was felt from their not being able to procure stamps after *three* o'clock, nor on Saturday after *twelve* (at which hours the Stamp Office closed), without going to the house of one or other of *the clerks*, who sold them at a high per centage, on the plea that it was out of office hours. I intimated, in reply, that I would, on my return to London, submit to the Board, that a supply of stamps should be furnished to two persons of credit and respectability, who might be found to reside in situations sufficiently centrical to afford the accommodation required. Accordingly, on my return, I proposed the two individuals at present appointed: the one residing in the Old Town, the other at the further end of Prince's-street in the New Town; but I proposed them with this precaution—that they should be appointed first for twelve months only, by way of experiment, as the amount of stamps sold by them in that time would be the best test of the accommodation to be afforded; if it were trifling, it would show that the accommodation was not important, and if few persons availed themselves of it, the appointment might then be discontinued; if, on the other hand, their demand was considerable, it

would show that the advantage was commensurate, as there could be no inducement for not getting them at the Stamp Office, but the facility thus afforded to individuals of obtaining them nearer hand. No remuneration was stipulated to be given to either of the persons thus appointed, but it was to abide the result of the experiment for the year, and to be regulated when the extent of the sale of stamps should have been ascertained.

"The correspondence which took place with the Board has been laid before us, from which we learn that Mr. Hepburne was finally instructed to carry this arrangement into effect."

It is necessary to the full developement of this subject, to lay the correspondence itself before your Lordships, since, notwithstanding the opposition raised to these two appointments, it is not too much to say, that no measure could have been adopted under the guidance of a more reserved and cautious discretion, than was manifested by the Board on the present occasion.

On the 21st day of June, 1821, the intended arrangement was notified by the Secretary to Mr. Hepburne, as follows:

"June 21, 1821.

"SIR,

"The Board being desirous of ascertaining whether the public of Edinburgh can, without additional expense, be accommodated with stamps without the necessity of obtaining them immediately from the Stamp Office on the Regent's

Bridge, direct that you supply Mr. Hatton, of the upper end of Princes-street, with a stock of stamps for sale, on his giving you security for the duly accounting for the amount thereof.

"I am, &c.

"W. KAPPEN.

"R. Hepburne, Esq."

A similar direction was given for the supply of Mr. Cameron.

On the 30th of June, a letter was received from Mr. Hepburne, in the course of which he writes as follows:—

"As it appears that Messrs. Hatton and Cameron are in expectation of some emolument for their trouble, I hope to be favoured with the determination of the Board as to this point."

In answer to which the following reply was written:—

"13th July, 1821.

"SIR,

"I am directed to inform you, that the Board deem it advisable to ascertain what may be the amount of stamps sold at the end of twelve months previously to deciding on any specific remuneration to be allowed to Mr. Hatton and Mr. Cameron, who must therefore accept the appointment on these terms, and, in the meantime, account to you at the end of each quarter for the amount of stock sold.

"I am, &c.

"W. KAPPEN.

"R. Hepburne, Esq."

No steps were taken to carry those appointments into effect; on the contrary, every endeavour was

in the meantime made to frustrate them; and on the 20th of July, the following letter was received from Mr. Hepburne:—

"Stamp Office, Edinburgh, July 20, 1821.

"HONOURABLE SIRS,

"Since I had the honour to receive your letter of the 13th instant, Mr. WILLIAM DUNDAS, Member of Parliament for the City of Edinburgh, and the LORD ADVOCATE for Scotland, have been to this office to inspect the house, and more especially to make some inquiries respecting the new appointments, now in contemplation for a better accommodation of the public of Edinburgh, in purchasing stamped paper. I believe these Gentlemen intend to correspond either with your Board, or that of the Treasury on this subject, as they are *both* of opinion that these appointments, particularly that in the New Town, *will not be required.*

"The LORD ADVOCATE informed me, that the Treasury are about to send *three* Gentlemen to make a general inquiry into this department, and to make a Report thereupon to his Majesty's Government. *This will be very satisfactory to us*, and what I have at present to take the liberty to suggest to the Board is, to postpone doing any thing farther in regard to the appointment of the new Sub-distributors, *until the arrival of these Commissioners.* And trusting that your Honours will think it advisable to agree to this suggestion, I will not trouble the Board at present with some remarks on the subject of these appointments, which I feel it my duty to do at the proper time.

"I have the honour to remain, &c.

"ROBERT HEPBURNE.

"To the Honourable Commissioners of Stamps."

To the above Letter the Secretary was directed to reply as follows:

" July 28, 1821.

" SIR,

" I am directed to inform you, that the Board can at no time be unwilling to receive any suggestion, from whatever quarter, which may be submitted to their consideration, previously to carrying into effect any regulation which they may deem it expedient to adopt.

" With respect to the inquiries which you inform the Board that Mr. WILLIAM DUNDAS, Member of Parliament for the city of Edinburgh, and the LORD ADVOCATE of Scotland, called especially to make, respecting the proposed arrangement for the sale of Stamps, which the Board had deemed advisable for the better accommodation of the public of Edinburgh; if any result arising out of those inquiries had been communicated to the Board, the Commissioners would have given it every consideration, and would willingly have suspended or relinquished any regulation which had appeared, from circumstances which they had not foreseen, likely to produce an effect in any manner at variance with the end proposed. But the Commissioners do not expect that any one of their Officers should be made the medium of communicating to them an opinion, unsupported by any reason, of persons unconnected with the office, that arrangements, which the Board had conceived to be expedient, '*will not be required;*' and that, because those persons had expressed an intention of corresponding with the Treasury upon the subject, such Officer should therefore take upon himself to postpone carrying the Board's orders into effect.

" I am directed to add, that these appointments are not of Sub-distributors, as they are termed in your letter; that the Board feel it incumbent upon them, in the discharge of their public duty, to make such provision as might appear to them most conducive to the better and more convenient supply of Stamps to the inhabitants of the New and Old Town of Edinburgh; and as it is intended by this arrangement to ascertain, by experiment, at the end of twelve months, the

extent of actual advantage arising from it, the Board desire that you will take the necessary steps for carrying their instructions into effect.

"I am, &c.

"W. KAPPEN.

"R. Hepburne, Esq."

Having laid thus much of the correspondence on the subject of these appointments before your Lordships, I shall now proceed to observe on what is urged by the Commissioners of Inquiry against their being carried into effect.

"As Mr. HEPBURNE is responsible for all the sub-distributors in the country, he states to us that the Board of Stamps had never before directed any particular person to be appointed to that office; and he further thought, *that the nature of the appointment had not been well considered, nor with a sufficient attention to local circumstances.*"

It is, to say the least of it, not within the ordinary rules of official courtesy that Messrs. Sykes and Forbes should make their Report the vehicle of disrespectful reflections on the Board as uttered by a subordinate officer; and this was still less justifiable, after having themselves stated that the above Correspondence "had been laid before them," which, alone, should have induced them rather to have repelled these undeserved imputations on the Board than to have recorded them. That Correspondence manifests throughout, that the measure was not only well considered, but weighed with a view to the removal of every ob-

jection that might be made to it; and that so far from its being adopted "without a sufficient attention to local circumstances," it arose wholly out of local circumstances; it was exclusively adopted for local conveniences, and originated in views of local expediency. Their Report thus proceeds—

"In the Sale Office, stamps are sold to the amount of 130,000l. per annum, and if two individuals were known to profit from the sale of stamps, and by receiving a poundage were enabled to give a bonus for dealing with men of business, it was more than probable that by far the greatest proportion of these sales would be made at their office."

But on what principle of fairness can these Commissioners of Inquiry justify the thus throwing out an insinuation for which they must have known that there was not the most remote foundation? If there had been the slightest reason to suspect that any such *bonus* had been given, there would have been no difficulty in proving the fact. I remark this, because I mean professedly to call your Lordships' attention to the spirit in which this measure is opposed. And, while I am upon this topic, I will just pause, to recall to the recollection of your Lordships the favourable representation that is given throughout both this and the former Report—as to Mr. Bremner's department—of the character and management of the persons acting under the present system; but no sooner does any measure of the BOARD come to

beco nsidered, than it is found to be unfit and ill-advised. It was endeavoured to be shown, that the delay in the delivery of Mr. Bremner's bills *was imputable to the Board.*—When the power is withdrawn from Mr. Bremner of instituting prosecutions without the Board's knowledge and concurrence, the regulation is represented as being *injudicious*, and it is recommended that this power *be restored.*—When the Board, with the approbation of the Treasury, appointed a separate Solicitor to the Legacy Department, the Commissioners of Inquiry, notwithstanding its return of duty has increased fourfold, recommended that this appointment be *set aside*, and the two offices *again consolidated.*—The Board had *suspended* Mr. Bremner with a view to his removal from office; but Messrs Sykes and Forbes are so well satisfied with his management as to recommend that he should have either *an increase of his former salary* or an *extra* remuneration for his *services.*—So, likewise, with the present appointment, which was adopted not only for the accommodation of the public of Edinburgh, but to put an end to abuses which were very generally complained of, the Commissioners find nothing that could have called for their adoption, or that can require their continuance.

I shall now proceed to observe upon the objections in the order in which they were made.

"We beg leave to report, that it appears to us, if the two

distributors are to be appointed for the supply of Edinburgh, that it would be better to abolish the Sale Office, with its establishment of Clerks, the business of which would be prodigiously reduced, and, so far as the supply of Edinburgh is concerned, quite unnecessary; but, after building an office, and furnishing it with a Sale Office, it certainly will not be desirable to supersede the use of it, for such an establishment as has been commenced, experimentally, for a year, unless the advantages to the public are very great."

That the increased facility given by these appointments to the procuring of Stamps is a great accommodation to the public of Edinburgh, is here sufficiently proved by the extent to which they avail themselves of it. Now if, in addition to this, a reduction, as it appears, may be thereby effected in the number of clerks in the Sale Office, it is so much the more in its favour. As to the abolition of the Sale Office, it does not necessarily follow that *that* would be expedient, since it might still continue the sale of stamps, by which all who live in the neighbourhood of Leith-walk, and adjacent to the new Stamp Office, would have equally the benefit of a supply of Stamps at hand.

"Again, we do not approve of the Head Distributor being relieved from the responsibility of any Sub-distributor, whether in Edinburgh or in any other part of Scotland. Mr. Hepburne should be left with the responsibility of accounting for every farthing of Revenue derived from the sale of Stamps in Scotland, and we doubt the expediency of any appointment which relieves him from this responsibility."

This ground of objection is peculiarly inappli-

cable to the appointments in question, as Mr. Hepburne is not responsible for stamps sold at the Sale Office, the distributor for Edinburgh and Leith having a *distinct appointment* from the Board, pursuant to a Treasury Warrant. The Report thus proceeds:—

"Nor can we conceive, that if no inconvenience was found as to the accommodation of the inhabitants of the New Town with stamps, when the office was in the Old Town, that it can be necessary to have a Sub-distributor in the New Town, since that the office is removed to the New Town."

Had no inconvenience been found, then certainly this reasoning might be true; the fact is, however, that great inconvenience *was* found, but it was submitted to of necessity, for there was no avoiding it. The accommodation speaks for itself. No person wanting a stamp would willingly go a mile for it, if it can be got within a hundred yards; but if it cannot, why, he must go a mile for it. Before the new Post Office was built, there was no receiving house, but it was found that such an accommodation was necessary, and the advantage of it was obvious. The Commissioners, moreover, forget, that from Mr. Hatton and Mr. Cameron stamps may be had *at all hours*, whereas, at the head office they cannot be obtained after three o'clock, nor on a Saturday after twelve.

"For men of business residing in the New Town, we think the New Office peculiarly well situated, being between the

General Post Office on the one hand, and the Register Office on the other, and within a few yards of both. To the one, men of business must be daily sending clerks with letters, and in the other are kept all the proceedings going on in Law Courts, and the various registers in which deeds are recorded, and through means of which executions, or, as they are termed, diligence is raised, by which means there is a constant resort of men of business and their clerks to the Register Office."

I am perfectly well acquainted with Edinburgh, and it is a fact well known to every professional person there, that very little business is done in the Register Office during the early part of the day. Professional men and their principal clerks are invariably in the practice of attending the Parliament House during the forenoon, and it is not until the evening that they apply—if they have occasion—at the Register Office. With respect to the Post Office, the mails are not despatched from Edinburgh until after *seven* o'clock in the evening, with the exception of the Carlisle Mail, which, however, does not close till *five:* were professional and mercantile men, therefore, induced to purchase stamps at the time they may be sending to the Post and Register Offices, they could not procure them, as the Stamp-office closes at *three* o'clock, and is therefore shut at the time they have occasion to send in that direction. The necessity, therefore, of these centrical appointments, where stamps may be had at any hour, is not in any manner superseded by what is here urged as to the situation of the new Stamp-office.

The objection next urged is to the situation of the respective residences of Messrs. Hatton and Cameron.

"When it is considered that Mr. Hatton's shop is situated in a continuation of the same street with the Stamp Office, and within about half a mile of it, we conceive, that even if additional facilities for the sale of stamps are thought advisable, this would not be considered as the best situation."

"With regard to Mr. Cameron's shop, which is situated in Bank-street, we think that it also is not well adapted for the supply of the Old Town. Its local situation is in that part of the Old Town which is situated nearest the New Town."

But if the situations of both these persons are so ineligible, how can it be accounted for, that the resort to them has been so great, and the sale of stamps so considerable, that the Commissioners of Inquiry, just before, express it as their opinion,—"that it would be better to *abolish* the Sale Office, with its establishment of Clerks; but that after building a new office, and furnishing it with a Sale Office, it certainly would not be desirable to supersede the use of it?"—Surely, nothing can evince more strongly the convenience of both places, or more completely refute any objection to these appointments, drawn from the local station of the persons appointed.

"It is our opinion, that some additional accommodation may be easily given to the public for the sale of stamps; and we beg to submit two modes for consideration, *either* of which, we think, will answer better than the two experimental appointments."

The first plan proposed is,

"That a branch of the Sale Office should be opened in Hunter's-square for the accommodation of the Old Town, and that both this new Sale Office and the present Sale Office should be opened an hour in the evening, and should be kept open an additional hour on Saturday afternoon."

Of this plan the Commissioners state that—

"The *only* expense would be the rent of a shop, and the salary of a clerk (as we do not think that any should be spared from the present Sale Office), and probably a small increase of the salaries of the clerks in the Sale Office, on account of additional attendance."

Now a shop in Hunter's-square could not be procured under a rent of £100 a year, and the clerk's salary could not be fixed at much below £150; but the Commissioners must have considered the subject very slightly, if they conceive that this would include the whole expense. In the first place, a sufficient stock of stamps of every description must be supplied to this branch of the Sale Office; but if the clerk is not to reside there, this stock of stamps must be left every night on the single lock. In this state of insecurity, no Sureties would hold themselves responsible, should any amount of stamps be stolen. To provide against this danger, the clerk must *reside* there; there must consequently be proper accommodation; a shop or Sale Office will then not be sufficient; there must be a sleeping-room and sitting-room, which must be *furnished;* and, as the clerk

cannot sweep his own room, or light his own fires, nor perform various other offices that are necessary, a charwoman becomes indispensable. There must, of course, be an allowance of coals and candles; for in Edinburgh the use of them will be required for three parts of the year. In addition to these apartments, there must, of course, be a coal cellar; and as candles, brooms, brushes, and other requisites for the charwoman cannot be kept in the bedroom, there must be some spare room appropriated to this purpose. Here, then, we have an office to be fitted up, and a house furnished! an allowance of coals and candles, and a charwoman, all for one clerk, which will be an expense of not less than £500 a year. But even when this expense is incurred, it would be insufficient; for there being only *one* clerk, he could not be absent for any period, however short, during the office hours, there being no person to supply his place, without locking up the office for security during his absence. The great inconvenience of this is obvious, and would very soon be felt. Neither could he be absent of an evening without danger, as he could have no person on the premises; and to leave a stock of stamps to the amount of many thousand pounds, thus exposed, would be a risk, against the consequence of which no Sureties would indemnify. Thus all this expense would be incurred to support a plan which puts the security of the stock most imprudently to hazard, inde-

pendently of all the inconveniences which it brings in its train. And all this for the purpose of superseding the two appointments by which the public are already infinitely better accommodated, and all this attendant expense and ill consequence avoided.

The second plan proposed is—

"That the allowance given to those who purchase stamps in large quantities, by schedule C. of the 44th of the late King, be extended to purchasers at the Head Office at Edinburgh."

But this plan is liable to still greater objections than the former. The object to be attained by enabling the public to obtain stamps from Mr. Cameron, in the Old, and Mr. Hatton, in the New Town, was,—as has been already stated,—to remedy the inconvenience so long complained of, occasioned by the Stamp Office closing so early, and to put an end to the improper practice of the Sale Office Clerks taking stamps home to their own houses, and retailing them at a high per centage; but this plan would not remedy either of these evils—its only effect would be to induce a few of the booksellers to purchase a small quantity of receipt stamps, which they would retail again with a profit of nine per cent. But in Edinburgh, where Bankers pay three per cent. for money deposited for however short a period, and four per cent. if exceeding six months, no persons can be expected to keep a complete stock of law stamps, for which they must pay ready money, at the risk

of losing more, on the precarious slow sale of high price stamps, than they would gain by the 1½ per cent. profit on those of smaller amount. The public of Edinburgh would still be restricted to the Stamp Office hours, or be subjected to the additional price charged by the Clerks, if they had occasion to purchase them after three o'clock, when the office closes.

It now remains *to develope the real cause of all this strenuous opposition* which is manifested on the part of the Head Officers in Edinburgh to the creation of these two appointments.—The *retail* sale of Stamps at the Head Office amounts, as stated, on the average, to £130,000 annually; the receipt of cash is consequently about £500 per day; it is on this *daily* receipt, placed out at three pounds per cent. interest, that the great profit is made; but *these two appointments*, whatever accommodation they may give to the public of Edinburgh, tend greatly to diminish the private source of emolument, because that daily receipt is lessened by one-half; and though Messrs. Hatton and Cameron account to the Head Distributor, still the cash is not paid in regularly, day by day, and the interest does not, therefore, accrue upon it so early, nor so constantly, as before. And as this profit of *the interest* was not exclusively received by the Head Distributor, the Comptroller, also, who kept the Interest Cash-book, with his whole system of duplicate accounts,

found these appointments interfere with the accustomed regularity with which this profitable part of the system had been conducted.

The Clerks in the Sale Office also lost one great share of profit. The selling stamps at home after office hours was wholly done away by these appointments. The COMMISSIONERS of INQUIRY profess to state the salary and emoluments of each Clerk in the different departments, when detailing their respective duties; but it is somewhat remarkable, that with respect to the Clerks in the Sale Office, this source of emolument is not noticed, but is adverted to under the margined head of "Holidays observed, and hours of attendance," a topic with which it is quite disconnected. It is important, however, that it should not escape the attention of your Lordships, as it is one of those prominent abuses *which led to the appointments under discussion.*

Their inquiries appear to have been made by the Commissioners in those channels in which the nature and extent of this extortionate practice might have been discovered; but, as is the case throughout, the parties themselves are *alone* examined, and their communication *alone* is reported.

"The first Clerk states that he is sometimes applied to for stamps on holidays, or after office hours, and that he has often come from his own house to the office and supplied the demand, without any remuneration, but more generally he charges

*something* for his trouble, in consequence of the party not applying during the office hours of business. The additional charge he makes is according to the amount of the stamp wanted, from 1*s.* 2*d.* to 2*s.* He has never taken more than the last-mentioned sum, however high the stamp. For a stamp of the denomination of 35*s.* he charges 1*s.*, *and so in proportion for those of a larger amount.*"

"We *shall afterwards submit what occurs to us* as the proper means of remedying this incorrect practice, after we have noticed the late appointment of Sub-Distributors in Edinburgh."

Your Lordships, however, will not fail to observe, that the Commissioners do *not* submit any mode of remedying this practice, which they thus admit to be *improper*, but which deserves to be characterised by a much stronger epithet, since both Mr. Hepburne and Mr. Pender sanction this practice, which, as well as *the receipt of interest on the public money*, makes part of the system. But not only is no remedy suggested, but these two appointments, which *did* remedy it, they labour to set aside; by which means this improper practice would be suffered thus *to continue*, and the public of Edinburgh remain subjected to the payment of such *extra* charge as the clerks may choose to impose, for the means of accommodation which they are thus permitted to monopolize.

Now, with respect to this statement which is given by the first clerk, it is not correct. It is capable of proof, that £5 per cent. was charged

on the value of stamps sold at his own house after office hours, and which of course made it his interest to keep the Sale Office open as short a time as possible. A very considerable profit was also made on the sale of bill stamps, arising from the extra charge on the paper.

"The third clerk (Mr. Neile) has never been applied to for any stamps, except *during office hours.*"

This assertion is so notoriously contrary to the fact, that the slightest inquiry would have proved it to be quite unwarranted, and have shown how liable these Commissioners were to be imposed upon, by taking as the ground of their Report the information of the party interested in withholding the truth. This third clerk, Mr. Neile, in addition to his situation as Clerk in the Sale Office, keeps a shop for the sale of shoes in the High Street, and even up to the time I was last at Edinburgh, there was always an oval board over the door with the following inscription—"LAW STAMPS OF ALL KINDS." Whether it was removed after the means had been established by the Board of procuring Stamps, both in the Old and New Town, or whether it was only removed pending the Commission of Inquiry, I don't know; but that the Stamps were regularly sold there, and at a high per centage, is so notorious, that it is somewhat surprising he should venture this assertion, and expect it would find a place in the

Commissioners' Report.—So much pains have been taken to set aside the appointments of Messrs. Hatton and Cameron, that I have gone more fully into detail on the subject of them than I should otherwise have done. Having myself originally recommended them, from a conviction that I was essentially serving the public by so doing, the opposition raised to them made it incumbent upon me, in justice to myself, to show what were the motives of that opposition, and how little weight it deserved in any serious deliberation as to their permanent establishment.

When Messrs. Sykes and Forbes, in addition to other instances in which they would reverse the judgment of the Board, beg to submit two modes of examination, "either of which, they think, will answer better than the two experimental appointments," I shall only observe, that they undervalue the endeavours of *others* towards the public service rather more than is warranted by any evidence which they have *themselves* given of their superior fitness either to examine or decide.

I have the honour to subscribe myself,

My Lords, your Lordships'

Most faithful and obedient servant,

JAMES SEDGWICK, Chairman.

It must, by this time, have sufficiently appeared to the public, that the aim of the Commission of Inquiry, as conducted by Messrs. Sykes and

Forbes, was to secure impunity to the agents in that nefarious system which the Stamp Department in Scotland established—to destroy the credit due to the representation which I had given of it to the Treasury—and to cast obloquy on the Commissioners of Stamps, by indirectly ascribing, to the remissness of the Board in LONDON, whatever it was found impossible to conceal, or to palliate in the conduct of their officers in EDINBURGH.—The space I have already occupied will not permit me to do more at present than remark—and it is a remark which I would fain keep uppermost in the mind of the reader—that the iniquitous system of mismanagement here developed had been brought under your investigation, and was every particle of it *within your knowledge*—as were also those Reports of Messrs. Sykes and Forbes, with my remarks upon them, which have occupied my three last letters—when you deliberately drew up and delivered to the House of Commons, as the truth under the sanction of the oath you had taken,—and when you sent forth to the world as widely as the public press could disperse it,—the following statement, which I quoted in the outset, and which I now again transcribe:

"In the course of our detailed examination in Scotland, which, as we have already stated, preceded that in England, it came in evidence before us, that various representations made by Officers there, with a view as well to the security as to the better collection of the Public Revenue, *had not received*

*the attention from the Chief Office to which they appeared entitled;* and our general inquiries in that part of the United Kingdom satisfied us, that the superintendence exercised by the Board in London over the collection of this branch of the Stamp Revenue *was neither regular nor effectual.* Under these circumstances, on our return to London, we felt it our duty to postpone other investigations for the purpose of directing our attention to this department; and as the causes out of which a situation of things so apparently defective and unsatisfactory had arisen could scarcely fail to affect the Commissioners, and as we had reason to suppose that *such causes* were in a great measure *to be traced to the state of the Board,* it became necessary to give to our examinations a character *more personal,* as well as to put to the subordinate officers questions more pointedly directed to the official habits and conduct of their superiors, than, under other circumstances, we should have thought advisable."

That I may avoid interrupting the train of reflection to which this must give rise,

I subscribe myself, Sir,

Your most obedient servant,

JAMES SEDGWICK.

Somerset-House, Oct. 10, 1826.

## LETTER VIII.

SIR,

I come now to the observations submitted to the Lords of his Majesty's Treasury, on the *third* Report of Messrs. Sykes and Forbes. This third Report, having the DISTRIBUTOR's Department for its subject, had not the same mass of corruption to screen, nor the same agents to protect, as the two former; it, of course, offers a more favourable specimen of their talents for reform, and of the fitness for the task to which they had been thus especially chosen. If it can lay no particular claim to praise, it, at least, contains nothing which, like the former, calls for serious reprehension.

Stamp-Office, March 19, 1822.

MY LORDS,

As my Colleagues expressed a wish that I should report separately on the first and second Reports of the Commissioners of Inquiry into the state of the Stamp-Office in Scotland, I have thought it better to do the same on each, as the same reason applies equally, though not in the same extent, to the third and fourth, as the former Reports.

The present Report, which is the third, relates chiefly to the Distributors.

The Commissioners begin with Glasgow :—

"The Glasgow District includes the counties of Lanark, Renfrew, Dumbarton, and Bute; and as the greater part of it is extremely populous, and as the flourishing towns of Glasgow, Paisley, Greenock, and Port Glasgow are comprehended within it, the distribution of Stamps is necessarily very great. The average for the last five years was £99,056, 8*s.* 10*d.*, although last year it only amounted to £92,761, the poundage for which, at £4 per cent. was £3,710, 8*s.* 7*d.* Out of this, however, the Sub-Distributor has to pay allowances to six agents in different parts of his district, besides the expenses attending the sale-office at Glasgow, which amounted last year to £1,060, so that the net-profit arising to him was £2,650, 8*s.* 7*d.* We conceive that this sum may suffer a reduction, still leaving the Sub-distributor a proper recompense for the responsibility and trouble connected with the office."

The statement is somewhat ambiguous; it would appear here that the expense to be deducted is £1,060, but it would have been desirable to have separated the expense of the establishment at Glasgow from the expense attending the six agents in different parts, because, as the Commissioners of Inquiry well knew that this lucrative office of Distributor for Glasgow is performed *by Deputy*, it follows, that their proposed reduction leaves him a *net* profit of £1,922, 16*s.* 7*d.* after paying those persons by whom the duty is discharged, or, in other words, is the salary of the office as *a sinecure*.

It is under *this* view that the question of reduction ought properly to have been brought under the consideration of your Lordships, because, if the net profit was (as might be inferred from this Report) the remuneration for the duty performed by the Distributor (Mr. Mure), after discharging all contingent and necessary expenses, the point then to be determined would be, is this remuneration more than equivalent *for the duty so performed*, or is it not? But if, on the other hand, there is *no duty performed*, and this £1,922 is to be the sinecure salary of the Office, it ought not, —without this fact being disclosed,—to be recommended to the sanction of your Lordships.

For the purpose of settling more adequately the rate of remuneration, the Commissioners divide the Distributorship into *five classes*, and they make the first to consist of Glasgow alone. It is surely somewhat extraordinary that a *single Distributorship* should be to form *a class*, and not less extraordinary that a net salary should be assigned to it equal in amount to that of all the other classes taken together! The principle on which this proceeded requires to be explained, as there is no apparent reason which can justify this Distributorship being treated with such select and exclusive favour.

The Commissioners of Inquiry state it as their opinion, that—

"This district (Glasgow) might be divided, no doubt, and the distribution of Stamps be placed under the management of more than one Sub-Distributor; but this would not be an advantageous change to the public, as it is obvious that the distribution may be effected at a lower poundage, always in proportion to the amount sold, till we reach the limit which does not allow of a fair remuneration for the *trouble and risk* attending sales by the Sub-Agent."—Page 25.

I would here observe, that, with regard to *the trouble* attending the sales by the Sub-Agent, with *that* the principal has no concern, as he has no share of it; and with respect to *the risk*, as the agent is chosen by himself, and gives sureties moreover for the stock of stamps consigned to him, it is the fault of the principal, if he either choose an improper person, or take insufficient securities; what is a fair remuneration, therefore, to the Distributor for Glasgow, and whether it would be advisable to sub-divide the district, are questions not at all governed by *either* of these considerations.

The true point of inquiry is this—Why should such populous towns as Paisley, Greenock, Port Glasgow, and Dunbar, be included in the same District with Glasgow?

These towns embrace an aggregate of population greater than perhaps the same number of towns in any other part of Scotland (Edinburgh, and Glasgow itself excepted), and no reason can be given for comprehending them within the Glasgow Distributorship that would not equally

justify the comprising Stirling, Perth, or Dundee; Stirling being about as near to Glasgow as Greenock. Glasgow is, without exception, the worst managed of all the Distributorships in Scotland, and there is no doubt but that the Revenue would be much better collected if there were one Sub-Distributor, at least, established *at each of these towns.*

The classification of the districts for the purpose of adjusting the rate per cent. on the sales, is not a measure that can be practically useful. The remuneration will generally best find its own level. But the Commissioners do not enter sufficiently into detail to enable either your Lordships, or the Board of Stamps, to form a judgment as to whether the salaries of the Distributors in any particular district should be continued or reduced. For instance, in ranking CUPAR within the third class, they say—

"There must also be room for discussion in forming a scale of this kind, where the higher duty (I presume they mean the higher per centage) should end, and the inferior one commence; and of course it may be doubted whether we are correct in keeping Cupar out of the second class, and introducing it in this one. The sum of duties collected for the last year in that district was £13,081, the poundage on which was £784. 17*s.* 2*d.* The expenses, however, incurred in this collection are stated to be £268. 1*s.* 6*d.*, leaving the net emolument only of £516. 15*s.* 8*d.*, which we cannot suppose will be considered as too great; and the same observation must apply to all the collections of an inferior amount, so that no reduction on them, at least, ought to be made."—P. 28.

But no judgment can be formed as to whether it is too great or not, because here—as before with respect to Glasgow—it is not stated what are the deductions which this expense of £268. 1*s.* 6*d.* consists of, and consequently it cannot be known whether the *net* profit is the profit cleared by the Distributor,—who performed no part of the duty, —after paying the persons by whom it is performed, or whether it is the net emolument for his *personal* discharge of the duty, after paying his agents in the more distant subdivisions of his district.

I have no doubt but that *the former* is the case, as I do not believe there are more than *two* distributorships in all Scotland, the duties of which are not wholly performed by *deputy*, which are DUMFRIES and ABERDEEN. But the Commissioners not having gone into these inquiries, their Report is defective in the particulars most important to be known, with a view to deciding either on the expediency of reducing the salary of the Directors, or on the extent of that reduction.

The great fault of the present system, as far as it respects the generality of the Distributorships, appears to me to be, that the emolument derived from them is such as to enable the parties to convert them into sinecures and to leave the duties of the situation to be managed by Clerks, to whom so scanty a remuneration is given, as will not repay the attention and official attendance required, and the result is, that the public business is ill conducted. There are, as I have already inti-

mated, only two districts in Scotland in which the Stamp Duties are properly collected, which are Dumfries and Aberdeen, on both which the principals (Mr. Syme and Mr. Brown) discharge the duties of the office personally.

The Commissioners of Inquiry say—

"We cannot avoid remarking, that the districts do not seem to us to be always divided very judiciously. We do not, for instance, see any advantage from leaving Forfar—neither in extent nor population greater than the adjoining county of Perth—with four Sub-Distributors, when the business is managed by a single Sub-distributor for PERTHSHIRE."—P. 34.

As one of the present Commissioners of Inquiry (Mr. Forbes) is the Sheriff of PERTHSHIRE, and the Stamp Distributor for this district, Mr. Husband, is Sheriff-substitute; he had obviously the means of obtaining full information as to whatever related to it. The Commissioners put the point for your Lordships' consideration thus—If Perthshire has only one Distributor, why should Forfarshire, which is not greater in extent and population, require four? But there is another view of the question, and it is this—If FORFARSHIRE requires *four* Distributors for the official supply of the district, how can it be that PERTHSHIRE, which is nearly double in extent, should be put under *one*? Now I have no hesitation in saying, that *the former* arrangement is the beneficial one for the public—*the latter* the profitable one for the individual. I remember this struck me forcibly when I was myself at Perth. The PERTH district reaches

to within one mile of Stirling, and even beyond it in another direction, to Dumbartonshire, on the South West, and Argyleshire and Aberdeenshire on the North and North West; it is in many places seventy or eighty miles in extent. Mr. Husband, the Distributor, as well as the Sheriff's-substitute for Perthshire, makes this extensive Distributorship a complete *sinecure*, and its management is certainly not such as to furnish an example that would at all warrant the placing all FORFARSHIRE under a single Distributor.

The Commissioners add,

"Nor can we see any necessity for having a Sub-distributor at INVERARY, and *another* within a few miles at Campbeltown in the highland and thinly-peopled county of Argyle. If these were respectively consolidated, the district of Forfar would fall into the second class, and Argyle into the fourth class, and thus a further reduction would be effected."

But the Commissioners are extremely incorrect, in stating Inverary to be only a *few miles* from Campbeltown; I have been at both places—their distance is between sixty and seventy miles, and *this* it is that occasions the necessity of having a Sub-distributor for the supply of Stamps in *each* of these places.

I shall conclude this Report, with offering some observations on the proposed reduction of the Distributors' salaries. A reduction of their per centage will, no doubt, be so much service to the Revenue; but as far as it affects the Distri-

butors themselves, it operates very unequally; proceeding on no principle of discrimination, it bears very hard upon some, while it is very favourable to others. If one Distributor, for instance, lives in a district where there is a considerable demand for Receipt Stamps, and sells thirty thousand two-penny Stamps *annually*, this (exclusive of Sundays) will be about one hundred *per day* throughout the year; the time this must occupy, and the trouble it must occasion, is manifest, and yet his remuneration at £4 per cent. will amount, at the end of the year, only to £10, while another Distributor, in a more opulent district, will receive at *one payment* an equal amount in *Legacy Duty*—two hundred and fifty pounds, for instance—and for this single transaction will receive the same profit of £10. It is quite clear, therefore, that to make an indiscriminate reduction of the Distributors' poundage, without first ascertaining on what *class* of stamps this poundage principally arises, and on the sale of what denomination of stamps it is, that,—taken on the average,—returns the profit made by the Distributors of the different districts, must be productive of great hardship and injustice.

The sales of the sub-agents, who supply the more distant parts of the district, consist chiefly of the lower denomination of stamps, and having no indemnity—as their principals have—in the profit on the higher duties for the trouble occa-

sioned by the lower, they will gradually abandon an employment which at present is but ill paid, and which they can hardly be expected to retain should the Distributors reduce their profit—as of course they will—in the same ratio in which their own is reduced.

This, should it happen—and it is very likely to do so—will occasion great embarrassment and inconvenience to the public, and great loss to the Revenue.

It is just as easy to supply a Deed Stamp of £20, as a Bond Stamp of 20*s*., or a Receipt Stamp of 2*d*., and yet the profit on the one is £1., on the other 1*s*., and on the last *not the half of a farthing*.

Distributors of Stamps differ wholly from Receivers General of Taxes; or from Receivers of Revenue Duties of any other description; the latter class of persons may be alike subjected to the same reduction, because their duties are exactly similar, and therefore the rate of reduction, whatever it may be, applies alike to the whole class. But in the sale of Stamps, the trouble of selling the very low price Stamps is compensated by the profit on those of higher amount, and by this means it is, that the aggregate profit settles itself into a fair remuneration. This may be made manifest by a very slight calculation. Taking, for example, the Sale of RECEIPT STAMPS —no person could sell this class of Stamps alone,

at a poundage of £4 per cent., or even £10 per cent., because, if he were to sell two-penny Stamps at the rate of one every minute, during seven hours every day (excluding Sundays) throughout the year, his poundage at the end of it would hardly amount to forty pounds!

Before any equitable reduction can therefore be made in the allowance given to the Distributors of Stamps, it seems essential that each Distributor should be first called upon to transmit an account of the total amount of his annual remittances for a given period, distinguishing each head of duty and the *per centage*, as it accrued under each; this account would show in what proportion the *poundage* should be adjusted. Suppose them, for instance, to be classed in some such manner as the following:—

On Stamps under the value of 6*d*., and under 1*s*.
Of the value of 1*s*., and under £1 . . .
Of the value of £1, and under £50 . . .
Of the value of £50 and upwards . . .
On all other Duties, [except on Legacies, Probates, Administration in England, and Inventory Duties in Scotland] . . . . .
On any amount of Duty under £100 paid on any *Legacy*, *Probate*, or *Administration*, or Inventory . . . . . .
On any such Duty so paid, amounting to £100, and under £500 . . . .
If amounting to £500, and under £1000 . .
If amounting to £1000 and upwards . .

On this system it would not be difficult so to apportion the poundage, as might, under any reduction, put the respective Distributors on a fair scale of remuneration; but an equal reduction of their per centage, when the labour and profit of the duty to be discharged is unequal, must always afford ground of complaint; this, however, must unavoidably be the result of any system which does not proceed on some such principle of appointment as above suggested.

I have the honour to be, my Lords,

Your Lordships' most obedient Servant,

JAMES SEDGWICK, Chairman.

To the Right Honourable the Lords Commissioners
of his Majesty's Treasury.

I had intended in my next Letter to trace the intimate connexion between *this* Commission of Inquiry of Messrs. Sykes and Forbes, and that Commission of Inquiry of which *you* are the Chairman, and of which this was the precursor. But the extract in the daily papers* betokened the appearance of the *Appendix* to the fourteenth Report, and having glanced my eye over the copy which I have just procured, I shall not fail to make it the topic of a few remarks, which, in the way of illustration, it seems imperiously to call for. You will, therefore, pardon me, if I suffer

this to take precedence of the subject to which I had intended that my next Letter should have been devoted.

I subscribe myself, Sir,

Your most obedient Servant,

JAMES SEDGWICK.

Stamp Office, Somerset House,
Oct. 11, 1826.

## LETTER IX.

SIR,

WHEN your Reports on the Stamp Department first made their appearance, you were every where represented as meriting the best thanks of the country for the very zealous and minute scrutiny with which you had pursued your inquiries. The Daily Journals applauded—naturally enough—the manifest diregard which you testified for the superiors of office. They commended the apparent sternness with which you applied the probe, without caring who was the sufferer. It was ascribed to that inexorable justice which abates nothing of its rigour from respect to the high official situation of the parties it has to deal with. This was a disposition to be cherished in public men; and the labours of yourself and your Colleagues were extolled accordingly.

That,—in the absence of all counter evidence,—you should obtain this high credit was a thing of course. But a reputation so entirely undeserved, was not likely to last. Your motives have been since developed, and the praises which followed you are at an end.

I had drawn the public attention, in my earlier Letters, to the fact of your having published your fourteenth Report, while the *Appendix* was kept

back, which contained the *Evidence* on which it was founded. This fact having got abroad, it was felt necessary to hasten its appearance with all possible speed. It has accordingly been brought out, and I shall now proceed to examine whether it is such as the Commissioners of Revenue Inquiry, on the sanction of the oath they had taken, faithfully to discharge the trust reposed in them, were justified in laying on the table of the House of Commons, with their warranty, that "his MAJESTY and both Houses of Parliament" might safely proceed to judgment upon the evidence contained in it.

It was the infamy which attached to the charge of being accessary to a fraud of high amount on the Revenue, as a Director of the County Fire Office,—which you so laboriously endeavoured to fix upon me,—that made me resolve not to wait for your Appendix, but to proceed at once to clear my character before the public from an imputation calculated to destroy me utterly in its estimation, to make me hide my face in the society of honourable men, and to take from me all sympathy, in the event of that ruin falling upon me, which was meditated from the very commencement of your Inquiry.

I have already shown the spirit in which your Inquiry has been conducted, but had I had access, when I wrote my *third* letter, to this Appendix which you have published within these few days,

and which is now lying before me, it would have enabled me to expose, with an effect still more striking, the proofs of deliberate combination against me, which your Report betrays, and the determination evinced in every page of it to put me out of the pale and protection of justice.

It will appear in the course of these letters, with what surprise I was struck, and how indignantly my mind was affected, by the avowal made by Mr. Sykes—and to which you emphatically call the attention of Parliament and of the Treasury—of his reason for carefully concealing from me, as Chairman of the Board, frauds which had been charged against the County Fire Office by some anonymous informer, and upon which inquiries had been for some time going on in Edinburgh, under a correspondence between himself and Mr. Bremner.

"In consequence," says your Report, "of the Chairman of the Board of Stamps being also a Director of the County Fire Office, Mr. Sykes represents that he had felt a difficulty in communicating with him in the first instance on the subject of a charge against this Company, nor did the Chairman receive any intimation of the imputed fraud from the Commissioner to whom the suspicion had been originally imparted. By the evidence of Mr. Sykes, it appears, that he was apprehensive that the object of the inquiry would be defeated by Mr. Sedgwick being put in possession of the facts on which the charge was founded, before the necessary steps had been taken to establish the case. This impression, founded in an avowed distrust of the conduct of the head of the department," &c.

It must be clear to every one, that whoever read this,—whether in Parliament or out of it,—would naturally be led to infer that my official character, with which Mr. Sykes, as Solicitor of the Board, was well acquainted, must have been, *previously*, such as to warrant all the privacy with which he had thus deemed it necessary to proceed. Every one would conclude that there were, no doubt, good reasons on the part of Mr. Sykes for holding it unsafe to let any hint of what was going forward transpire in my presence. It was meant that the public should so conclude; and you designedly arrest attention to it that they may not fail to do so.

No sooner did I procure a copy of the Appendix, than I immediately turned to the evidence of Mr. Sykes, that I might see whether he had set forth any ground for the foul imputation which his language so plainly conveyed; when to my utter astonishment,—after reading his examination over and over again, before I could credit my senses—I found that he had uttered no such words, that the whole was *a fabrication of your own*, and that you have actually taken a part of the garbled examination of one of the Clerks of the Solicitor (Mr. Mawe), in reference to one of the Comptroller's Clerks (Mr. Deans), and with a design, and for a purpose, which cannot fail to be seen, you have deliberately recorded it as the language in which Mr. Sykes, as Solicitor of

Stamps, testified his opinion before the public of my character as Chairman of the Board!! But I must put it down in detail, or the fact will not obtain belief.

Mr. Sykes, in the course of his examination as to the first intelligence he received with regard to the alleged fraud on the Revenue by the County Fire Office,—which alleged fraud, by the way, it has been proved, was unfounded, and originated in a most scandalous conspiracy,—states as follows:—

"Having considered the subject for some days, I went into the Board Room, there being present Mr. Hallam, Captain Montagu, and Mr. Addington; I stated that I had received this paper, with which I believed they were acquainted, and that I thought of writing to Mr. Bremner to get information. I wrote on the 22d of May; a week after that it was mentioned by Captain Montagu and Mr. Addington to the Chairman, who thought that though he was connected with this office, he ought not to be kept in the dark about it; the Chairman then came out to me with a great deal of good temper, and asked me what was going on? I said there was a very awkward charge against Mr. Barber Beaumont, for having withdrawn large sums from this office when the policies were subsisting. I said, "you may think it strange I have not mentioned this to *you*, but understanding that you were intimate with Mr. Barber Beaumont, and a Director of that office, I did not feel myself at liberty to mention it;" he said Mr. Barber Beaumont was *not* a particular friend of his, and that he would follow up the inquiry, and that the best way would be to wait till the time for a fresh return of duties, and then to examine into it. I do not think I mentioned at that time that I had written to Mr. Bremner,

which I had done three or four days before; that was on the Friday evening; it was too late then to get at the book in the Comptroller's office, and he said the next morning we would look over that book, and examine into the alleged disparity between that office and others. I did not see him the next day, we did not happen to be in the office at the same time; I had no further conversation with him till the Tuesday following. On the Tuesday I received a letter from Mr. Bremner, disclosing the information he had obtained; I took the letter into the Board; the Chairman was extremely angry to think I should send to SCOTLAND to make inquiries on this subject; he said, the proper way would have been to have gone to the office, and asked for the books; I said, 'We may differ a little upon that. If it had been found out, on the books coming before you, probably that is the way which would be adopted; but if a person comes and gives information, putting it in a strong way that fraud has been committed, the first thing is to ascertain whether fraud has been committed or not;' that was all that passed. He (the Chairman) was touched personally, thinking an imputation would be thrown upon his conduct, and that it would be thought he had sanctioned the frauds, *whereas I am perfectly satisfied he knew nothing at all about them.*"

Before I advert to the examination of Mr. Mawe, it may be necessary, in the way of explanation, to introduce the following extract from the evidence of Mr. Deans, the Clerk in the Comptroller's Office, who had been specially sent by the Board to investigate the books of the County Fire Office, with directions to trace out the frauds charged against it if any had been committed. On his return it did not appear to me that his inquiry had been full enough, and he

was directed by the Board to renew it; to this circumstance it is that the following extract from his evidence refers:—

"Did you go again?—Yes, I did.

"What passed?—I understood that Mr. Beaumont was in Paris, and had left a message with Mr. Johnson to say that he could not spare the time of his clerks to be taken up in going through an investigation with me; that he could say no more than he had said. I told Mr. Johnson that that answer would not satisfy the Board, that I should be told I did not want Mr. Beaumont's assistance, but his books; they said they were ready to produce any books they were compelled to do by the Act, but in the absence of Mr. Beaumont they did not feel justified in producing any others. I then returned to Somerset House.

"Did you look at any of the books they showed you?—No, I did not; they said the books were in use, and that their chief clerk was absent, or not forthcoming—that if I requested to see those books, they must write to the Board for further time for the payment of the duty; on my return to Somerset House, in the square I met Mr. Sedgwick, who asked me what I had done, and I stated to him what I have now stated; he seemed very angry at the refusal, and told me "*to go back and say that he insisted upon every book and paper being shown to me;*" I requested him to give me a note, and as he was turning back with me for that purpose, I suggested, that as Mr. Beaumont was absent, and the thing did not press, we might as well wait till he returned, and that I did not doubt he would be ready to give me the information.

"Did you state this to the Board?—I stated it to Mr. Sedgwick, and on the following day to the Board generally.

"What passed at the Board when you stated that?—I was directed to go again when Mr. Beaumont returned." (p. 633.)

Having quoted this explanatory evidence, I

now earnestly entreat attention to what follows; the individual under examination is Mr. Mawe, the solicitor's clerk. After stating that the Chairman had pointed out the number of a particular policy as incorrect, which he (Mr. Mawe) had found to be so, the interrogatories thus proceed :—

"Upon finding this to be incorrect, what did the Chairman do afterwards, do you know?—He then stated that that was another reason why the inquiries should have been made from Mr. Beaumont directly, and a full statement of every thing given to him that he might explain it.

"Did he then direct any inquiry should be made upon the subject?—He did.

"Who did he direct to make that?—He desired that I would give the necessary instructions to the Comptroller to investigate the numbers at the County Fire Office.

"Who was sent?—Mr. Deans.

"Was he sent the same day?—It was a few days afterwards; I gave him certain numbers, with instructions to ascertain the commencement and termination of those policies.

"Did you give Mr. Deans the necessary information to enable him to make those inquiries?—Yes, I did; the CHAIRMAN directed us to instruct Mr. Deans to make such inquiries as would elucidate an explanation of how those circumstances had arisen; and on *consulting with Mr. Sykes,* it was thought advisable to desire him to inquire *only* into the commencement and termination of the policies; and there was a subsequent communication with the Chairman of the Board, at which he was dissatisfied that Mr. Deans was not put in possession of *all* the circumstances.—(Mr. Sykes.) Mr. Deans did not know that there was any fraud going on, or any thing of the kind.

"(*To* Mr. MAWE.)—When Mr. Deans returned, had you any further communication with him or with the Chairman?

On the day following, Mr. Deans communicated the result of his inquiries to the Board; that result did not answer the expectations of the Chairman, and I was ordered to explain why Mr. Deans had not been put in possession of more facts than he had been; I said, 'I thought it was *unnecessary for the object of the inquiry,* to put *him* in possession of those facts, *suspecting that by possibility the object might be defeated by Mr. Beaumont getting possession of them,*' and the Chairman was exceedingly angry that I should presume to take that upon myself. Mr. Deans was then directed to attend at the County Fire Office to investigate every transaction."

Now, this explanation here given by the solicitor's *clerk*, of his reason for giving such deficient instructions to Mr. Deans, you have, for a premeditated purpose, put, in the words and manner following, into the mouth of the *solicitor himself* as applied by *him* to *me*.

"By THE EVIDENCE OF MR. SYKES, *it appears* that he was *apprehensive that the object of the Inquiry would be* DEFEATED BY MR. SEDGWICK BEING PUT IN POSSESSION OF THE FACTS ON WHICH THE CHARGE WAS FOUNDED, before the necessary steps had been taken to establish the case. This impression, FOUNDED IN AN AVOWED DISTRUST OF THE CONDUCT OF THE HEAD OF THE DEPARTMENT, &c."

After this exposure—added to those already made—can there be two opinions as to the light in which your Reports must be viewed by Parliament and by the Country? And yet, it is this Report,—containing wilful misrepresentations, at

which every man of common feeling and common honesty revolts—which you gravely lay before the Legislature, as the faithful result of your labours, and to the impartiality of which you have called God to witness! It is these Reports in which you have thus perverted the truth, and falsified the facts,—and this too, so glaringly, that they, in a manner, turn King's evidence against their own injustice,—that you have deliberately caused to be presented to the Throne, as the ground upon which his Majesty may be conscientiously recommended to remove me from office!

With respect to the *Evidence* entertained in this Appendix—and upon which you have conducted your Inquiry throughout—it is in direct variance with all the rules of reason, and subversive of all the principles of justice. As the basis of an inflictive judgment, it presents a document hitherto unknown to our Courts of Law, and unexampled in the Journals of Parliament. But of this hereafter. In the meantime,

I subscribe myself, Sir,

Your most obedient servant,

JAMES SEDGWICK.

Stamp Office, Somerset House,
October 19, 1826.

## LETTER X.

SIR,

In clearing my official character from the aspersions which you have so publicly thrown upon it, I do not mean to affirm, or even to imply, that you have been grossly deceived. Had you been imposed upon by false testimony, or had you illogically drawn your inferences from insufficient premises, although I might have disputed your competence as a Commissioner of Inquiry, I should have thrown no imputation upon your uprightness as a man. But you have no such apology to plead. No imposition has been practised, either upon the slowness of your discernment, or the dulness of your understanding; on the contrary, the misrepresentations you have made are purely and exclusively your own. You have sought to establish false charges with infinitely more zeal than is usually shown in the investigation of actual guilt—you have laboured to give a colour of reality to facts which have no existence —you have raised up accusations on evidence which you ought not to have received, while you have withheld evidence, which, in justice, you ought to have produced. On what ground can you justify your averment, that on *specially ap-*

*plying* for the Insurance Accounts of the County Fire Office for the year 1819, nothing could be produced to you, but *the fragment of the cover* and a *part of one of the pages*, when *two quarters* of that very year's account were proffered to you *perfect and entire?* Wherefore is it that you give a most conspicuous place in your Report to your letter from Edinburgh, which charges *unprecedented* neglect and delay against the Commissioners of Stamps, while you suppressed their Secretary's answer, which removed all ground of complaint? What vindication will you offer for the deliberate distortion of evidence, which had for its object to confirm that wrongful impression which your Report had already raised against me? But for the development of facts which your false accusations have drawn from me, I must have been ruined in the public estimation, utterly, and without redress. What inducement—every one would have said, and properly enough—what inducement could Mr. Wallace have, as a Commissioner of Inquiry, for attacking the Chairman of the Board of Stamps?—What desire can *he* have to arraign his conduct undeservedly?—What object can *he* seek by his removal from office?—Of what importance is it to *him* who fills the Chair?—He has only a public duty to perform, and what motive can he have that should interfere with the fair discharge of it?—Such questions are reasonable; because it was not suspected that you could be

leagued with that power in SCOTLAND, which upholds the very abuses which I had strenuously laboured to put down.—It was not known that I had unveiled a system of nefarious mismanagement in the Stamp Office in Edinburgh, and that, by causing the removal of the principal agent in that system, I had excited the bitter resentment of that party in Scotland, through whose influence he was re-appointed to office.—It was not known that Commissioners chosen afterwards, by means of that influence, to inquire into and report on that system which I had thus denounced, had drawn up and presented a Report exactly at variance with mine, and calculated not only to set aside its authority, but to involve me in the disrepute which had been cast upon it.—It was not known that I had dissected this adverse Report—as has been seen—and had made it wholly unavailable to its purpose, by proving to demonstration that no reliance was to be placed upon it. Again,—not one of the readers of those extracts, full of accusations, from *your* Report, which swelled the columns of every newspaper—not one of them was aware of the relentless enmity which I had thus drawn upon myself, and the unsleeping vengeance with which it had ever since pursued me. The Report above adverted to, of Mr. Sykes, by which my Report of 1818 was meant to be overthrown, was presented to the Treasury

in 1822. *You* entered on your investigations into the Stamp Department in Edinburgh, in the autumn of 1824, the year before you began your inquiry at the head office at Somerset House, *but, to this day,* your Report on the Stamp Department in EDINBURGH *has never been laid before Parliament,* although your Reports on the office in LONDON, which did not commence till the year following (1825), are presented, printed, published, and their contents dispersed all over the kingdom! To what are the public to ascribe this keeping back of a Report which ought, in the order of things, to have appeared at least *twelve months ago?* The non-appearance of it is the more important, because the system to which it related was one entire mass of abuse, and required that not an hour should be lost in rescuing the Revenue from the heavy losses it had so long borne, and which called urgently, and with imploring voice, for remedy!

The lamentable state of disorder which prevailed in the Stamp Department in Scotland, may be collected from what has already appeared. But I will not rest the proof of it on any written statement or report made by me. I will appeal to evidence which cannot err. Mr. Bremner was suspended in October, 1818, and Mr. Renny,—who, at my instance, had been just before made by the Treasury, Solicitor to the Legacy Depart-

ment,—was directed to act as *interim* Solicitor, which he did, and continued to do until the reinstatement of Mr. Bremner in 1819.

Let us now compare the difference in the receipt of the Revenue, during the corresponding *six* months of the year 1818 and 1819, from January to June inclusive, under only six heads of duty. Every other head of duty was improved, but I will confine myself to these.

| Duties in Scotland. | From January to June, 1818. | | 1819. | | Increase. | |
|---|---|---|---|---|---|---|
| | £ | s. | £ | s. | £ | s |
| Attorneys' Certificates..... | 3,198 | 0 | 9,653 | 0 | 6,455 | 0 |
| Attorneys' Mandates..... | 970 | 5 | 1,222 | 0 | 251 | 15 |
| Fire Insurance..... | 10,307 | 19 | 11,164 | 19 | 857 | 0 |
| Newspapers..... | 8,859 | 16 | 9,381 | 3 | 521 | 7 |
| Inventory (Probate) Duty | 12,657 | 0 | 16,200 | 10 | 3,543 | 10 |
| Legacy Duty from January to August inclusive..... | 19,355 | 10 | 33,777 | 17 | 14,422 | 7 |

No stronger proof need be adduced than this, to show the loss sustained under the management of Mr. Bremner; and how little the interests of the Revenue were consulted in his restoration to office. The space to which I am limited does not allow me to go further into detail. I can give only the more striking facts. The conclusions to which they lead are on the surface.

I advert next to the benefit which accrued to the public, by removing the Solicitorship of the Legacy Duty from the collection of Mr. Bremner, in whom it had been hitherto vested, and forming

it—in the year 1819—into a separate office, under the management of Mr. Renny.

The following comparison of this duty, for the three years immediately *preceding* the year 1819, and the three *subsequent* years (inclusive), will sufficiently exemplify the advantage which resulted from it:—

| Amount of Legacy Duty paid in Scotland | | | |
|---|---|---|---|
| in 1816 | £17,153 | 1 | 7 |
| 1817 | 26,391 | 11 | 0 |
| 1818 | 28,080 | 3 | 0 |
| 1819 | 49,764 | 1 | 2 |
| 1820 | 62,872 | 0 | 2 |
| 1821 | 58,828 | 12 | 5 |
| 1822 | 63,624 | 14 | 10 |

Continuing the annual receipt of this Duty up to the close of last year, it stands thus:—

| | | | |
|---|---|---|---|
| In the year 1823 | £50,359 | 19 | 2 |
| 1824 | 61,370 | 10 | 11 |
| 1825 | 64,805 | 13 | 9 |

As this is a branch of duty which can have thus annually augmented only in consequence of the increased diligence and fidelity employed by Mr. Renny in the collection of it, the deficient amount of it while in the hands of Mr. Bremner may be obviously accounted for.

Now, Sir, after what is here stated,—after all that has been stated in my former letter, and stated upon evidence which you cannot controvert;—after calling to mind the appalling, but literally correct, description of the Stamp Office, and the

Stamp Officers in Scotland, which is detailed in my correspondence with the late Mr. Bindley —bearing in memory the fact of Mr. Bremner's restoration to office, by which all the earnest endeavours which had been made to rectify the hideous abuses which had so long prevailed in the Stamp Department in that quarter of the kingdom had been baffled, and the interest of the Revenue, and the exertions of the Board of Stamps equally set at nought—let us turn once again to the statement which deliberately, and on oath, you have laid before Parliament, and the Lords of his Majesty's Treasury, and in which you insidiously represent these corrupt and incorrigible functionaries in SCOTLAND, as most diligent and worthy men, zealous for the increase and improvement of the Revenue, but unable to effect their good purposes, owing to the indifference and disregard to their public duty, which was shown by *the Commissioners in* LONDON, to whom their representations were addressed.

"In the course of our detailed examination in SCOTLAND, also, which, as we have already stated, preceded that in England, it came in evidence before us, that various representations made by officers there, with a view as well to the *security*, as to the *better collection* of the public Revenue, had not received the attention from the Chief Office, to which they appeared entitled; and our *general inquiries* in that part of the United Kingdom *satisfied us*, that the superintendance exercised by *the Board in* LONDON over the collection of this branch of the Stamp Revenue was neither *regular* nor *effectual*. Under these circumstances, on our return to Lon-

don, we felt it our duty to postpone other investigations, for the purpose of directing our attention to this department; and, as *the causes* out of which a situation of things so apparently defective and unsatisfactory *had arisen*, could scarcely fail to *affect the Commissioners*, and as we had reason to suppose that *such causes* were in a *great measure to be traced to the state of the Board*, it became necessary to give to our examinations a character more *personal*, as well as to put to the *subordinate Officers* questions more pointedly directed to the official habits and conduct of *their Superiors*, than under other circumstances we should have thought advisable."—13th Rep. p. 6.

The baseness of this imputation on the Board, and the motives of it, are betrayed in colours so strong and glaring, that the most short-sighted must discern them. It is impossible not to be struck with the exactly opposite temper in which you conduct yourself towards these subordinate officers in Edinburgh, and their superiors in London. The malignity with which you draw the sword against the one, and the earnestness with which you throw your shield over the other, leave no choice in deciding on the disposition in which you have proceeded.

But I am fearful of extending this letter too far, I shall therefore conclude the subject of it in my next. I must tax the candour of the public, but I must not tire its patience. I therefore subscribe myself, Sir,

Your most obedient servant,

JAMES SEDGWICK.

Stamp Office, Somerset-House,
Oct. 26, 1826.

## LETTER XI.

SIR,

It betrays a remarkable want not merely of sound policy, but of common prudence, that, acting in the elevated and deeply-responsible situation of Chairman of this Commission of Inquiry, you should have laboured to represent me as regardless of the interests of the Revenue, when, in repelling the imputation, I must necessarily be drawn into a detail of facts, which, while they cleared me from that charge, would retort it unanswerably upon yourself. But you never expected this publicity. You had calculated that your Report would be received as conclusive, and would be acted upon without answer and without appeal. Having recommended that the present Commissioners of the Stamp Board should be removed, you conceived that the justice of the measure would pass without dispute.

If I had ostensibly failed in my duty to the public, you would have been well justified in arraigning me before that tribunal to which I had become amenable. If, for example, I had been appointed by the Lords of his Majesty's Treasury, as Mr. SYKES had been, to inquire into and report on the management of the Stamp Revenue in EDINBURGH, and into the conduct of the officers there; and if,—repressing the truth,—I

had reported those officers to be men of integrity, while a profusion of proof to the contrary lay before me, and had described the system most favourably, at the very time that it gave every scope to malversation—had I so done, you might *then* have denounced me to the Lords of the Treasury as highly culpable, and have left me without an answer. But offences, it seems, take their complexion from their locality, and that which would be punishable on one side the Tweed, is praiseworthy on the other; accordingly, you suggest, in your fourteenth Report, that the *fixed* salary of the Solicitor of Stamps, at present 1500*l.* a year, ought not to be fixed in future at less than 2000*l.* His Reports on the Scotch Stamp Office bear ample testimony to the services which, in your eyes, entitled him to this favourable recommendation.

Again,—had I been appointed CHAIRMAN of a COMMISSION of REVENUE INQUIRY—had I, in that capacity, gone into this same course of investigation in SCOTLAND, and having the like evidence of the same profligate system of misconduct and abuse in array before me;—if, instead of promptly and faithfully reporting upon it to Parliament, I had,—as far as in me lay,—kept it carefully from the public ear, and from the public eye; and if, aware that its enormities had already been disclosed by the CHAIRMAN of the STAMP BOARD in ENGLAND, whose express and imperative duty it

was to disclose it,—I had laboured to effect his removal, and to break up the Board itself—while I, at the same time, represented those officers in Scotland as deserving well of the public, at the very time that they thus preyed upon and impoverished that Revenue which I had been specially commissioned to reform:—if I had *thus* acted—if, instead of drawing off these leeches I had left them to suck on,—you would have been well justified in arraigning me before Parliament; you would *then* have destroyed me deservedly in the good opinion of the public; and I must have submitted, in shame and silence, to whatever sentence had been passed upon me. Fortunately, however, I have not to defend myself against such charges.—My offence is of quite another kind.

Although no Report on the System on which the Stamp Department in Edinburgh is conducted,—and to which your inquiry was directed so long ago as the year 1824,—has been laid before Parliament, it is easy to anticipate the very indulgent and encouraging spirit in which it has been dealt with. There is enough discoverable, from the occasional references to it in your Fourteenth Report, to take all the merit of prophecy from this prediction. Indeed, it is in the necessary train of things. How otherwise is the *reinstatement* of Mr. BREMNER to be justified? How is the condemnation which *my* Report had

passed upon the whole system and its officers to be *reversed?* The labour of Mr. SYKES to invalidate and overthrow that Report, had come to nothing; this failure had greatly increased the difficulty of upholding this disordered and ruinous system, and to persist in representing the persons acting under it, as being active and honest guardians of the public revenue, became, after this, matter of no light responsibility. It happened at this juncture, that Mr. Ellis, one of your colleagues, retired, and as the investigation into this *Scotch* branch of the Stamp department required the aid of some one whose determination "to execute faithfully, impartially, and truly, the powers and trusts reposed in him," would be as ardent and inflexible as your own; Mr. R. W. HAY, the *private Secretary of* LORD MELVILLE, was chosen as the individual best qualified to assist as your colleague, in the examination upon which you were about to enter. Mr. HAY was accordingly appointed a Commissioner of Revenue Inquiry, and having given to it all the benefit of his assistance, while it was carrying on in *Scotland*, and having attended two or three of the early examinations of the officers of the Stamp Revenue in England, *he resigned*, and was succeeded by Mr. Hamilton.

As the name of Mr. HAY will, in all likelihood, not appear among the signatures to the Report, the fact of his having been thus joined in the Com-

mission as your coadjutor in *Scotland*, becomes important, and deserves that the attention of Parliament should be drawn to it.

I have already intimated, that the strong bias which your Report on the *Scotch* Stamp Department will exhibit, *whenever it appears*, may be collected from the tenor of the questions put whenever, in your Fourteenth Report, that department is, in any way, adverted to. For example, while interrogating Mr. Kappen, the secretary, and Mr. Sykes, the solicitor, on the subject of the salaries of the Distributors of Stamps, you put a most extraordinary *leading question* to the former, to which he most readily returns the answer to which it opened the way, and Mr. Sykes, as *amicus curiæ*, clenches it with a most praiseworthy promptitude, he having been himself a *Commissioner of Inquiry in* SCOTLAND, and being, of course, a complete master of the subject.

Mr. Kappen is asked—

"What are the salaries of your Distributors?—They have a poundage.

"What is the poundage that you allow in England?—It is four per cent. upon the first 10,000l., three per cent. upon the next, two and a half upon the third, and upon all above 30,000l. two per cent.

"You know nothing officially of the time that they remit to the Distributors in the country?—No.

"Do you know it unofficially?—No.

"Is there *any employment of the money* by the ENGLISH distributors?—I have not heard of any.

"In SCOTLAND *that is recognised?—It is*—(*Mr.* SYKES.) *It is acknowledged* as part of the distributor's salary."—(14th Rep. p. 385.)

Now, Sir, you must *yourself* have known, that it was *not* recognised, for my remarks on Mr. Sykes's report had gone fully into explanation on the subject, and had exposed the unworthy subterfuges under which the Head Distributor in Scotland attempted to support his claim of interest on the public money; which remarks *you had yourself seen.* By whose authority was this illicit employment in SCOTLAND of the Public Revenue in the hands of the Distributor *recognised?* By the Treasury?—Never. By the Board of Stamps in London?—Never. On the contrary, it was interdicted as soon as it was discovered. *You* knew this, Sir, and Mr. Sykes knew it. On what sanction, then, does *he* affirm that *it is acknowledged* as a part of the Distributor's salary; and wherefore do *you* acquiesce in this averment?

When you call to mind the occasion on which the practice of *receiving interest on the public money* was so solemnly prohibited by Parliament, it must, one should think, have occurred to you, that SCOTLAND was the last place in which that lesson ought to have been without its effect.

The progress of your examination of Mr. Kappen and Mr. Sykes displays a mode of examination altogether unexampled in the history of *evidence.* It is of importance to dwell a little upon

this. Ample testimony has been adduced, to show the impediments which were thrown in the way of every endeavour to rectify the corrupt practices which prevailed in the Stamp Department in Edinburgh. The fact of Mr. Bremner's suspension from office is known, and the cause of it; and no one is now at a loss to discover what influence it was that replaced him.

But knowing that Parliament and the public were unacquainted with all this, you so frame your *questions* as to put the *answers* you wish to obtain in the mouth of the witness; and the manifest aim of them is, to transfer all the reproach from their subordinate officers in SCOTLAND to the Commissioners of the Board in LONDON, as, by so doing, you not only uphold the very favourable Reports presented to the Treasury by Mr. Sykes, but prepare the way for *your own* Report, which,—when produced—will be found to follow in the same track of approbation :—

The witness under examination is Mr. Sykes—

"It appears that most of those things that have been alluded to as defects in the Scotch system have been observed upon by the Commissioners, and of course brought under the notice of the Board?—(*Mr. Kappen.*) Yes.

"The theory of the two establishments is the same, is it not?—It is.

"And therefore those are differences in practice, and differences that have obvious inconveniences attending them?—Yes, except that the manufacturing part is done at the head office in London.

"*Can you explain why those defects have never been remedied by the Board?*—When Mr. Neil was Chairman, he took up the subject very much indeed, and wrote several letters and remedied many inconveniences that we laboured under, and particularly with respect to remittances.

"But *it does not appear that any thing has been done subsequently to the Reports of the Commissioners?* Nothing.—(P. 387.)

It is not a little remarkable, that you should designate that inveterate and organized system of mal-practice in the Scotch Stamp Office, of which the actors, one and all—principals and clerks—divided the profits between them; it is, I say, not a little remarkable, that you should apply to this, the anodyne and gentle phrase of "the *defects* of the *Scotch* system." You here tell Mr. Sykes, the witness you are examining, that "It *appears* that the defects of the *Scotch* system have been observed upon by *the Commissioners*, and, of *course*, brought under the notice of the Board." To which *leading* question, *not* Mr. Sykes, but Mr. Kappen, the Secretary, answers, "YES!!" Now, who are the *Commissioners* thus mysteriously alluded to, and whose names are not even distantly hinted at? Why, they were virtually embodied in the single person of Mr. Sykes *himself**; for the

* I have good grounds to believe that Mr. Forbes, his coadjutor (now a Lord of Session), took but little part in the inquiry. He bears the character of a man of unblemished integrity, who would not knowingly lend his name to any sinister purpose. Mr. Sykes being the Solicitor of Stamps from London, it was natural that he should confide the inquiry chiefly to him, and that he should give credit to representations, the accuracy of which he could have no reason to suspect.

*fidelity* of whose Reports, the vouchers, it is quite clear, were never brought *under the notice of the Board.*

It must, moreover, strike every man of reflection as very extraordinary, that this examination of Mr. KAPPEN as to the defects, as they are called, of the *Scotch* system, about which he practically knew nothing, should take place in the presence of Mr. SYKES, who all the while remains a silent bystander; and when he (Mr. Kappen) is told—for it is a curious feature of your Reports, and worthy remark, that wherever *the Board* is concerned, the persons examined do not give information to *you*, but you to *them*;—when Mr. Kappen is *told* that "It does not appear that *any thing* has been done to remedy those defects *subsequently to the Reports of the Commissioners*," he consentingly answers "NOTHING:" while, at this very time, the Solicitor of Stamps, Mr. SYKES, whose *Reports they were*, is standing at his elbow, without either being asked for,—or offering,—a word of explanation.

And *this* mode of conducting a PARLIAMENTARY INQUIRY, you offer deliberately to the Legislature and to the Country in proof of your having "faithfully, impartially, and truly, according to the best of your skill and judgment, executed the trust reposed in you!" I thank God, we live under a Constitution to which the criminal process you

have thus conducted is wholly unknown. It is the first specimen of its kind—and I hope, for the sake of all that is dear to Englishmen—it will be the last.

I subscribe myself, Sir,

Your most obedient servant,

J. SEDGWICK.

Stamp Office, Nov. 2, 1826.

## LETTER XII.

SIR,

WHEN an extent of power unknown to the Constitution,—and which, therefore, ought not to have been trusted in any hands—was confided to *yours*, it would be sheer affectation in *me*, were I to express any thing like surprise at the result which has followed from it. Great, however, as my personal stake may be in that result, it is as nothing compared with the stake which the great body of the people of this kingdom have in the direful precedent which it has established, and the destruction of all that is dear and valuable to their rights as men, and to their privileges as Englishmen, which is involved in it. If a Court of Inquiry, such as is constituted by this Parliamentary Commission, is to be created at pleasure, and admitted among our recognised tribunals of Criminal Justice, and if men acting under it as *you* have done, are to sit on the seat of judgment, it will be soon seen and felt, that the curse of the most tyrannical Inquisition which disfigures the page of our history did not end with the STAR CHAMBER.

In this Court of Parliamentary Inquiry, in which you have the honour to act as President, the evidence against the party accused is taken *in his absence.* You summon whom you please, and *only* whom you please—you put questions which *lead*

to the answers which it is wished should be made to them—No person is present but the short-hand writer employed to take down the evidence. The whole process is conducted with a profound and perfect secrecy—not a whisper of the charges reaches the individual against whom they are made, —and the only intimation he receives of the trial is announced in a copy of the judgment, which is followed by the execution of the sentence!!! Nor is this all. It would be something if a power of *appeal* remained to the Courts of Law; but no such appeal lies. The *Report* of the Commissioners is the basis on which the decree is pronounced, and that decree is irreversible. The accused party,—however pure and guiltless,—has no means afforded him either of exculpation or redress.

What vindication, Sir, can you offer for having, in conjunction with your colleagues—sheltered from prosecution a witness whose *perjured* testimony the parties injured by it have a legal right to put in proof?

The statute 2 Geo. IV., under which your authority was constituted, expressly enacts—

"That if any person, upon their examination before the said Commissioners of Inquiry, shall wilfully and corruptly give *false evidence*, every such person so offending, and being thereof duly convicted, shall be, and is hereby declared, to be subject and liable to such pains and penalties, as by any law now in force, persons guilty of wilful and corrupt perjury are subject and liable to."—(S. 12.)

What answer will you give to the country, for having stepped between the subject and the Legislature, and intercepted that protection which this enactment has so wisely provided? Under what plea will you seek to justify a course of conduct warring thus openly against the will of Parliament, and barring up the last avenue to justice? What apology will you advance for having—in the fullness of your authority,—annulled the only provision which guarded against the abuse of it?

It were vain, after the lesson which the dismemberment of the Board of Stamps has read to the Commissioners of the other Boards of Revenue, and with the model of such a Report before them as your memorable labours have furnished—it were vain,—after this lesson,—to expect that any man will hereafter venture to discharge his duty in the face of power, or to look to the interest of the public and of the revenue as the great end of his exertions. He will call to mind what a PARLIAMENTARY COMMISSION OF INQUIRY can effect, and will turn to other themes. Should he chance to be sent on a mission of reform, he will beware, at all events, how he bends his step towards the *extra-judicial* dominions of the North. If he makes any attempt at reformation in *that* Palatinate, his fate is sealed. Woefully will he deceive himself,—if he trust to his integrity to carry him through—that which should be his security, is the source of his danger. But the warning is

now before all, and each, in his department, will be wise enough to profit by it.

Having said thus much on the result of your Report, I return again to the Report itself.

It is of importance—with reference to what I have already said, and shall hereafter have to say upon it—to draw attention to the reason given for withholding all account of the SCOTCH system of management, the iniquities of which Mr. Sykes has so anxiously exerted himself to keep afloat, and whose labours, in that way, you have so conspicuously patronised.

"The voluminous nature of the Examinations which are annexed in the Appendix, and of the various Accounts and Documents which we have found it necessary to call for, combined with the great and unavoidable detail into which we have entered, in order to render clear and intelligible the remedial measures, which, in each instance, we have felt it our duty to suggest, to meet the laxity and defectiveness of system which we have found to prevail in almost every branch of the Stamp Department in England, has rendered it necessary for us to reserve for a Supplemental Report, some other branches which it was our intention to have introduced, as well as the observations we have to make on the management and collection of the Stamp Revenue both in SCOTLAND and Ireland."—P. 132.

It would appear from this, that you had found the *management* and *collection* of the Stamp Revenue in SCOTLAND, to be upon the whole so well conducted, that any account of it to Parliament might very safely be postponed, while you hastened, in the mean time, to report upon the *laxity*

and *defectiveness of system* which you found to prevail in ENGLAND. Now, I believe, it is very generally acknowledged by every one acquainted with the details of finance, that no Revenue is collected more efficiently, or with less expense, than the Stamp Revenue in England, nor is there any system, the improvement and regulation of which has been brought, from time to time, more carefully or more effectively under revision, by the Board appointed to preside over it, than the system under which that branch of the Revenue is conducted. The documents and details of the Office furnish ample proof of this; nor does your Report point out any loss which—*lax* and *defective*, as you describe this system to be—has arisen from it in even a *single instance*.

As to that pernicious and profligate mode of management in EDINBURGH, which I reported upon in the year 1818,—of which Mr. Sykes's Commission of Inquiry is so tolerant in the year 1822,—and about which, although it was brought under your official examination in the year 1824, the public have as yet heard nothing; *that* system, and the abuses practised under it, exist to this day, to the heavy loss of the Revenue, while your zeal for Reform is all this time directed to the system in LONDON, from which the Revenue sustains no loss at all.

The improvement which was effected in the receipt under every branch of the Stamp Duties during the eight months of Mr. Bremner's sus-

pension from office, in the year 1819, has been already shown. The following comparative amount of the *Probate* and *Legacy* Duties in ENGLAND and SCOTLAND, taken from their commencement in 1797, furnishes pretty decisive evidence of the "management and collection of the Stamp Revenue" in *that* quarter of the kingdom—your observations upon which you are constrained to *reserve* for a *Supplemental Report.*

AMOUNT of DUTY on LEGACIES, and on PROBATES of WILLS, collected in England and Scotland.

| | PROBATES. | | | | | | LEGACIES. | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | England. | | | Scotland. | | | England. | | | Scotland. | | |
| | £. | s. | d. | £. | s. | d. | £. | s. | d. | £. | s. | d. |
| Yr. end. 1 Aug. 1797* | — | — | | — | — | | 33,447 | 13 | 9 | 286 | 3 | 7 |
| 1798* | — | — | | — | — | | 78,001 | 18 | 3 | 1,689 | 18 | 11 |
| 1799* | — | — | | — | — | | 97,401 | 6 | 6 | 3,421 | 3 | 10 |
| From 1 Aug. 1799* To 5 January, 1800* | — | — | | — | — | | 56,591 | 17 | 8 | 1,346 | 11 | 3 |
| Year ..... 1800* | — | — | | — | — | | 138,009 | 0 | 0 | 3,222 | 0 | 7 |
| 1801* | — | — | | — | — | | 110,594 | 0 | 6 | 3,275 | 16 | 5 |
| 1802* | — | — | | — | — | | 128,518 | 5 | 9 | 6,683 | 1 | 11 |
| 1803* | — | — | | — | — | | 146,064 | 5 | 11 | 10,937 | 15 | 4 |
| 1804* | — | — | | — | — | | 182,214 | 10 | 3 | 5,737 | 6 | 10 |
| 1805 | 312,623 | 1 | 4 | 1,899 | 11 | 8 | 171,744 | 8 | 3 | 8,881 | 14 | 4 |
| 1806 | 351,076 | 3 | 2 | 3,802 | 2 | 0 | 220,615 | 0 | 1 | 8,404 | 12 | 9 |
| 1807 | 377,978 | 14 | 7 | 3,659 | 13 | 10 | 291,075 | 19 | 7 | 9,244 | 14 | 4 |
| 1808 | 397,242 | 17 | 2 | 4,736 | 14 | 10 | 314,276 | 13 | 10 | 10,557 | 16 | 9 |
| 1809 | 424,046 | 11 | 0 | 9,327 | 13 | 4 | 520,983 | 5 | 3 | 25,437 | 18 | 6 |
| 1810 | 430,654 | 3 | 9 | 10,079 | 3 | 1 | 430,091 | 8 | 11 | 11,553 | 16 | 3 |
| 1811 | 434,633 | 2 | 10 | 11,439 | 12 | 8 | 429,392 | 10 | 2 | 14,383 | 18 | 11 |
| 1812 | 413,964 | 7 | 5 | 16,781 | 17 | 9 | 466,131 | 6 | 10 | 17,175 | 9 | 4 |
| 1813 | 417,263 | 5 | 2 | 16,697 | 7 | 11 | 545,115 | 6 | 3 | 26,186 | 0 | 2 |
| 1814 | 506,854 | 8 | 8 | 18,956 | 1 | 2 | 675,807 | 15 | 0 | 19,434 | 5 | 11 |
| 1815 | 504,959 | 9 | 5 | 26,757 | 13 | 6 | 726,219 | 19 | 8 | 39,885 | 15 | 5 |
| 1816 | 694,529 | 13 | 7 | 17,253 | 1 | 7 | 631,346 | 6 | 4 | 25,452 | 8 | 10 |
| 1817 | 954,528 | 2 | 11 | 26,391 | 11 | 0 | 672,757 | 6 | 5 | 22,582 | 0 | 0 |
| 1818 | 855,633 | 9 | 3 | 28,080 | 3 | 0 | 682,221 | 0 | 0 | 29,359 | 10 | 0 |
| 1819 | 825,262 | 15 | 1 | 49,761 | 1 | 2 | 688,747 | 14 | 0 | 31,616 | 0 | 0 |
| 1820 | 827,014 | 17 | 0 | 62,872 | 0 | 2 | 728,724 | 2 | 8 | 34,838 | 0 | 0 |
| 1821 | 901,787 | 0 | 0 | 58,828 | 12 | 5 | 751,060 | 3 | 4 | 45,597 | 0 | 0 |
| 1822 | 990,333 | 3 | 6 | 63,624 | 14 | 10 | 706,805 | 10 | 11 | 32,777 | 10 | 0 |
| 1823 | 930,881 | 14 | 6 | 50,359 | 19 | 2 | 782,042 | 18 | 0 | 38,556 | 10 | 0 |
| 1824 | 888,087 | 13 | 0 | 61,370 | 10 | 11 | 805,222 | 14 | 6 | 46,718 | 0 | 0 |
| 1825 | 992,100 | 13 | 2 | 64,805 | 13 | 0 | 831,137 | 7 | 0 | 43,374 | 0 | 0 |

* During these years, and until the year 1805, no separate account was kept of the Probate Duty.

The benefit derived to the Revenue from my mission to Edinburgh in the year 1818,—and which extended to every other branch of the Revenue,—would be sufficiently exemplified by this document alone, in which it will be seen, how greatly,—after that period,—the receipt of these duties augmented. But it is not with a view of establishing this fact that I refer to it. I refer to it for the salutary purposes to which it may be made available—for the information it furnishes as to *the past*, and the instruction it suggests as to *the future*.

I have already adverted to the circumstance of your refusing to furnish a copy of any part of your proceedings to further the ends of public justice. This is more peculiarly unwarrantable and unjust, because there is no feature of your Reports more glaring, or more revolting, than the *leading* questions which you constantly put, whenever you wish either a conclusion to be inferred, or the effect of a charge to be produced.—There is nothing in which the Bar are more watchful of each other,—nor in which they are themselves more carefully watched by the Judges,—than against the so shaping a question as to inveigle the witness into the admission of any fact or charge which an adversary is desirous to establish, or to *lead* him, if he is a willing witness, to return such an answer as,—when so assisted,—may be readily obtained from him. The following example will show the very dan-

gerous use that—in such hands as yours—may be made of a practice which the Courts so wisely guard against:—

"On our specially applying for the Distributor's accounts of the County Fire Office for the year 1819, nothing could be produced to us but the fragments of the cover, and a part of one of the pages. The neglect and inattention with respect to these accounts is *the more worthy of remark,* in reference to *a statement made by the* CHAIRMAN *in his evidence,* 'that WITHOUT THEM IT IS IMPOSSIBLE TO TRACE ANY FRAUD.'"

As your Report was published without the Appendix, I had no means of referring,—when I wrote my *third* Letter,—to the *statement* which I am here affirmed to have made, and I was the more surprised that I *should* have made it, knowing, as I did, that no *copies* of any accounts can be produced in evidence, while access can be had to the *originals.*

When the Appendix appeared, I found on turning to my examination, that what you here give as being a *statement* of *mine,* was *an assertion of your own,* contained in the following *question:*—

"*Unless they* (the accounts) *were to be taken care of, it would be utterly impossible to trace any frauds?*"—P. 659.

That I might answer, "*Certainly,*" is likely enough, because the first impression on any man's mind would be, that if any accounts are destroyed, it must be impossible to trace any fraud that re-

quires the production of them. But when you follow up the question, and I see the bearing of it, my answer is given in terms which make it unpardonable in you to have given *your own statement* as "*a statement made by the* CHAIRMAN *in his evidence.*"

"The Crown would be deprived of the means of proving any fraud contained in that account?—We should have the means of referring *to the original books*, of course, if any thing of that kind happened."

Your misrepresentation, and the motive of it, are so glaring, as to render all comment superfluous.

I have elsewhere said, when speaking on the subject of evidence, that if I were asked, to what cause it is to be ascribed, that the middling and lower ranks in England retain so much of that spirit of independence which is seen to pervade them, and which,—though it may occasionally struggle into licentiousness,—is yet a very powerful preservative of that system of public freedom which is the proud characteristic of our island;—if, I say, I were to be asked, to what cause is this peculiarity to be traced? I should answer,—it is to be traced to the stern impartiality with which our laws are administered, and to that masculine spirit of equity, which distinguishes the axioms on which they are founded—it is, that the highest and the lowest walk with equal assurance into the

Forum. *There* the conditions of men are levelled by the despotism of JUSTICE; and all those civil and social interests by which the great commonwealth of man is bound together, are with equal vigilance superintended and secured.

Your Reports present throughout such outrages on all the rules of evidence as have no parallel in any examinations which the annals of jurisprudence have hitherto put upon record.—But the space I have already occupied reminds me that I should bring this letter to a close. I therefore, for the present, subscribe myself,

Sir, your most obedient servant,

JAMES SEDGWICK.

Somerset-Place, Nov. 9, 1826.

LONDON:
PRINTED BY THOMAS DAVISON, WHITEFRIARS.

# LETTER THE THIRTEENTH,

ADDRESSED TO THE

## RIGHT HON. THOMAS WALLACE, M. P.

CHAIRMAN OF THE COMMISSION OF REVENUE INQUIRY]

BY

## JAMES SEDGWICK, ESQ.

LATE CHAIRMAN OF THE BOARD OF STAMPS.

---

LONDON:

PRINTED FOR J. RIDGWAY, PICCADILLY; C. HUNTER, BELL-YARD, LINCOLN'S-INN; J. M. RICHARDSON, CORNHILL; AND OLIVER AND BOYD, EDINBURGH.

1826.

LONDON:
PRINTED BY THOMAS DAVISON, WHITEFRIARS.

## LETTER XIII.

SIR,

I TRUST that the renewing my correspondence with you, after so short a respite, will not be ascribed to any feverish concern for my own reputation. I have already done enough, I should hope, to relieve myself from all anxiety on that score. Your having forced me before the Tribunal of the public does not necessarily make me a defendant, nor do I stand before it in that character. My design, from the outset, has been to develope the disposition in which you have conducted your parliamentary *Inquiry*, and to show—as I have done on the most conclusive evidence—that it has been conducted under a mode of inquisition, which leaves no public man safe, and in a spirit of personal hostility against which—under the extensive powers confided to you—the individual attacked—be he who he may—has no means of protecting himself, and which exiles him, at once,

from the law and the constitution. The object of the Letter which I now address to you is, to demonstrate—by evidence still more unanswerable than any which I hitherto held it necessary to bring forward—that my removal from the Chairmanship of the Stamp Board, although effected by your report, was long since preconcerted and determined upon—that the suspension of Mr. Bremner from the office of Solicitor of Stamps in Edinburgh was a step never forgiven by his patrons, who—as is but too well known—claim sovereign jurisdiction in Scotland, and never pardon any act which implies a denial of their supremacy.

I shall contract my statement within the smallest possible compass; but it is essential—in order to show how the event has worked silently on—that I should refer back to that period of my official life which connects itself with all the results that have followed from it.

Previous to my appointment to the Board of Stamps in ENGLAND, I had been Chairman of the Board of Excise in SCOTLAND. To contend—in that part of the empire—against abuses favoured by local patronage is a most unpromising task to *any* man, to *an Englishman* it is ploughing the rocks. But on this topic I abstain. It would be a long statement to unfold, and this is neither the time nor the place for it. If, however, any confirmation—as far as my own exertion in the

way of redress went—were required, I might appeal to the whole officers throughout the Excise service in that quarter of the kingdom.

As, moreover, the necessary nature of my official duties could not but afford to the local authorities in Edinburgh the full means of judging as to the manner in which I fulfilled them, I can adduce no higher or more honourable proof of their approbation than their having conferred upon me the freedom of their city, "*as a testimony*,"—for so the LORD PROVOST and Magistrates were pleased to express themselves with reference to the tribute they bestowed,—"*as a testimony of the faithful and correct discharge of his public duties as* CHAIRMAN *of the* BOARD OF EXCISE, *and of his consequent services to the community.*"

I should be unworthy this honourable attestation of my public services, could I be insensible to the value of it. But to me, at this crisis, it has a worth beyond that which it contains intrinsically. It is important—and it is for this purpose chiefly that I adduce it—as confirming the testimony which is borne to those services in the following Letter, which I had the honour to receive from Mr. George Harrison, then one of the Secretaries of the Treasury, on the occasion to which it refers.

"SIR,

"HAVING laid before the Lords Commissioners of his Majesty's Treasury your Letter of the 17th ult., tendering your

resignation of the situation of Chairman of the Board of Excise in Scotland, whenever their Lordships shall please to testify their acceptance of the same;

"I am commanded by their Lordships to acquaint you that they are pleased to accept thereof, and at the same time to convey the expression of their Lordships' sense of the zealous and able manner in which you have discharged the duties of that situation.

"I am, Sir,

"Your most obedient servant,

"GEO. HARRISON.

"Treasury Chambers, 8th Aug. 1815.

"*James Sedgwick, Esq.*"

It is proverbially said of praise well earned, that it will wear well. Usually it may be so; but, after all, the consciousness of having deserved it must form its chief value, for, beyond this, there is nothing to be depended upon.

I of course do not mean to affirm, that because a man has been faithful to his duty in one situation, that he must necessarily be so in all. I can hardly be supposed to maintain so unreasonable a position. But this I contend—and in this I am satisfied, that every candid mind will go along with me—that there is one important advantage which such a person has, or ought to have, and it is this,—that his having given proof of integrity and good conduct in *one* public situation, raises a fair presumption of his having acted with the like integrity and good conduct in *another*. This inference in his favour is

well justified. It is grounded on the experience of our common nature, and of the ingrained principles and habits of man. Were it not so, all the reliances upon which we lean, in the intercourse of public and private life, would be at an end. If an individual, without any ostensible motive or adequate object, could—on moving from one office of trust to another—become suddenly the reverse of himself, there would be no longer any confidence in the human character. If a person of this class is on a sudden charged with abandoning his trust, and revolting from the public service, it would be required—by a Jury called to try the truth of such a charge—that the evidence produced to them should be of a kind the most unexceptionable and conclusive,—that it should be so resistless as to rebut the strong previous inferences which existed in his favour. They would take care that no malice—no hidden motives—no sinister purpose, entered into the charge. They would look backward to its origin, and forward to its object; and they would decide, upon the whole view of the case, like honest men. Arraigned thus before a Court, proceeding according to the forms of justice, such an individual would be safe. But charged by Accusers divested of all responsibility—tried by Inquisitors departing from all the rules of evidence—and condemned unheard by a REPORT—of what value or avail is a man's character? Before a tribunal such as this, all the

protection he ought to have from it is taken from him—all the preservation that it ought to obtain for him against false accusation and confederacy, is gone.

I come now to Mr. SYKES, to whom you have been pleased to lend, so visibly, the light of your countenance. I hardly know in which of his various capacities I ought to advert to him. Whether as Solicitor of the Stamp Board in London,—as a Commissioner of Revenue Inquiry —as the avowed Patron of official abuses in Edinburgh, — or as the public Apologist of Mr. Bremner.

I will consider him in his office of COMMISSIONER OF INQUIRY, because it is that on which he seems most alive to imputation, and most concerned,—as it is very proper he should be,—for the purity of his fame. I refer to him in this character the more readily because he was your precursor in the path of *Inquiry;* and his Reports, the substance of which are already before the public*, are connected most intimately with your own. They are hammered out on the same anvil; and what is said of the one applies most usefully, in the way of illustration, to the other.

It was in the year 1818, that as Chairman of the Board of Stamps, I received the directions of the Lords of his Majesty's Treasury to proceed to

* Vide Letters 6th and 7th of TWELVE LETTERS, &c.

Edinburgh, "and to make inquiry into the system and conduct of this important branch of the revenue, and to report speedily and fully to their Lordships thereon." I need not add, that it was the urgent wish of Lord Liverpool, and of Mr. Vansittart (then Chancellor of the Exchequer), that I should give to their views of improvement, expressed in the Treasury Warrant, the utmost possible effect. Had their Lordships had the slightest desire to shelter the abuses which were suspected to prevail in the Stamp Office in Edinburgh, it is obvious that they would not have appointed me expressly to examine into and report upon them. Their Lordships' instructions, transmitted to me by Mr. George Harrison, drew my attention pointedly to the office of the Solicitor, Mr. Bremner; after desiring that I would "report specially for their Lordships' consideration, what arrangements it may be expedient to adopt, with the several Commissary Courts in Scotland, and the judges and officers thereof, for the purpose of giving full effect to such new system of management as their Lordships may direct to be carried into effect," it proceeds thus:—

"And my Lords further desire that you will, with as little delay as possible, investigate the conduct of the *Solicitor* of the Stamp Duties in North Britain, and report to their Lordships *fully* the result of such investigation; and that you will require of the said Solicitor, to deliver to you an account of all monies received and paid by him from the date of his

appointment to the date of your requisition for the same; and if the urgency of the case should appear to you to require that any immediate proceedings should take place before their Lordships' directions could be received upon the subject, my Lords are pleased to direct you to consult with the Lord Advocate, and to authorize you to take such steps as his Lordship may advise."

I found, very early in my investigation, that no consultation with the LORD ADVOCATE was at all likely to assist me in the progress of it. Suffice it to say, that I was enabled to pursue my inquiries without any advantage derived from advising with his Lordship; and that, upon my statement to my colleagues, as to the malversation and mismanagement in the Solicitor's department, he was suspended from office, and his suspension reported to the Treasury.

The patrons of Mr. Bremner were as little disposed as Mr. Bremner himself to submit quietly to the jurisdiction exercised by government over the official functionaries of Scotland. The usual machinery was set in motion: the authorities here were besieged with complaints of the injustice which the Solicitor had been made to suffer, under the inspection to which his official conduct had been subjected. It is but fair that complaints of injustice,—come from what quarter they may,—should be heard. I have already said, that, "As my Report upon the system of management at the Stamp Office in Edinburgh involved charges of

serious import against the principal officers of that department, it was but reasonable to require that my statement should be corroborated. In acceding, therefore, to the request, whether of Lord Melville or the Lord Advocate, that another Commission of Inquiry should be sent down to Scotland, the Lords of the Treasury acted in the spirit of equity. It was but justice to Mr. Bremner, who had been suspended, and to others whom my Report involved, that they should have the benefit of such a full and fair revision of the charges alleged against them as might warrant the judgment, which, if true, they appeared to call for *." But was the Commission of Inquiry,—obtained at the instance of the Lord Advocate, and which, in addition to a third person in Scotland, to be chosen by himself, Mr. Sykes, in conjunction with Mr. Campbell, the Comptroller of Legacy Duties, was appointed to conduct,—was this Commission of Inquiry instituted with a view to a fair and faithful re-examination of the grounds upon which the Board of Stamps had suspended Mr. Bremner? When asked from the Treasury as a measure of justice, was it applied,—or was it ever meant to be applied—to the purpose for which it was granted? Quite the reverse. In the hands of Mr. Sykes—for Mr. Campbell was too wary to appear on the

* See 6th Letter, p. 7.

fore-ground—it was no other than a treacherous and underhand attempt to discredit the statements I had made with regard to Mr. Bremner, and thus to lay the ground of a charge against me,—to be brought forward when occasion should call for it,—of having represented the Solicitor of the Stamp Department in Scotland,—with a view to his removal from office,—as a person unfit to be continued in it, when, on a special commission of inquiry being sent down to Edinburgh to review his system of management, he was found to "*have executed the duties of his office with* STRICT INTEGRITY*," and his whole system of official management to be quite other than what I had represented it to be. But my observations upon this Report—which are before the public—by unveiling its perfidy, put an end to its purpose; and the result was—that the labours of Mr. Sykes, the Solicitor, and of his clerk, Mr. Mawe, were utterly thrown away—Mr. Campbell, the Comptroller, lost all hope of *succeeding to the Chair*—and Mr. Bremner was left—with his character no way mended—to continue his mismanagement as before.

To this Commission of Inquiry *yours* succeeded. That both are of precisely the same colour and complexion I have already shown. When your Report on the Stamp Office in Scotland is laid

* See 6th Letter, p. 7.

before Parliament—as long since it ought to have been—the features which betray their common origin will be sufficiently visible.

It should seem by a letter which appeared a few days since in the public papers that Mr. Sykes has matter of remonstrance against me. I have touched his reputation, it seems, with too rude a hand. He complains that, in the numerous letters which I have addressed in the newspapers to the Right Hon. Thomas Wallace, I have taken unwarrantable liberties with his name. I wish, for the sake of Mr. Sykes, that I could plead guilty to this charge; but the truth is, that knowing the course of conduct he has pursued, I could never have conceived that he held his character in any estimation, or considered a good name as of any account. Far from making any unwarrantable mention of him, I have acted towards him with a scarcely justifiable forbearance; for I have abstained from bringing forward proofs of his confederacy with Mr. Bremner against the Revenue, in his character of Commissioner of Inquiry into the Stamp Department in Edinburgh, and against me, personally, as *Chairman* of the Board of which he was the Solicitor.

What regard can Mr. Sykes be presumed to have for his reputation, when,—while abetting a false accusation against the County Fire Office,—he was seeking to obtain, if possible, some colourable evidence in concert with Mr. Bremner, with

whom, unknown to me as Chairman of the Board, he was in correspondence on the subject? What respect could he be supposed to have for his character, when,—after stating publicly in evidence before You, with regard to the frauds he was thus striving to substantiate, that *he was perfectly satisfied I knew nothing at all about them* *,—he was at the same time—as *you* well knew—employing every effort in his power to induce the belief that I was privy to them? Why, when he referred to a *second* Letter, which he had received from Mr. Bremner, did he give *parol* evidence of a part of its contents—which evidence, by the way, it was your duty to have rejected? and why was not this *second* Letter produced before you as the first had been? Why the reason it was neither tendered nor asked for, was this—because the one was drawn up in office form, and with a view to production, while the other was a *private* communication, and betrayed a mutual anxiety to get up a charge which,—should it find its way into your Reports,—would beget suspicions which it was very desirable to avoid?

The evidence as given by Mr. Sykes stands thus:

"I have had a second Letter from Mr. Bremner, dated the 22d June, from which it appears to me that there has been some *tampering* with the people who knew the facts.

* See Letter IX.

He states that ' With regard to Mr. Grant, *nothing is to be hoped;* that he cannot find any receipts; that he appears to have some idea of having suspended his insurance; that Mr. Gordon had promised to look for his receipts, but that, when called for them, he evidently evaded the inquiry,'" &c.

All this is put down in your Report as *evidence!* When I read it, and found that this second Letter was withheld, I resolved, before I quitted office, to call for the production of it, which I did, and Mr. Sykes was unavoidably obliged to produce it to the Board. It begins thus:

" DEAR SIR,

" *I very much regret* that my inquiries with regard to the insurance of Messrs. Gordon and Robb, James Virtue, and John Grant, have not proved, nor are likely to prove, *satisfactory,* although my applications to them, both personally *and otherwise,* have been *frequent* and *urgent.*"

Then follows the part referred to by Mr. Sykes, after which it concludes thus:

" *I regret having been so unsuccessful,* and that there is little prospect of obtaining more satisfactory information. If more shall be obtained, it shall be forwarded; in the mean time, I beg you will excuse the imperfection of this hurried communication, which, as there are *some other matters in hand* this evening, must be despatched *without booking.* With great regard

" I remain, Dear Sir,

" Yours very truly,

CHA. BREMNER."

It is manifest from this style of correspondence, that the clandestine movements of Mr. Sykes and Mr. Bremner were not without a purpose. I am no stranger, Sir, nor are you, to the ultimate step to which they were meant to be made subservient.

The persons who figure most prominently in your Reports,—and whose services in the way of accusation seem most to have been counted upon as most unfailing,—are Mr. Sykes, Mr. Kappen, and Mr. Campbell. Under Mr. SYKES's Commission of Inquiry, which preceded yours, the great agents were—himself, Mr. Mawe (his clerk), and Mr. BREMNER, *whose conduct he had been specially sent to investigate.* In what spirit, as towards me personally, *your* Inquiry has been pursued, and on what evidence your Report is framed, Parliament have the means before them of deciding. The secret combination with which Mr. Sykes conducted *his* Commission will appear from the following Letter *to* Mr. CHARLES BREMNER, junior, which, *unknowingly*, and *without intending it*, he, at the time, laid before the Board, with other official correspondence relative to Scotland which chanced to be called for. Had he been aware that a copy of it was in existence, and in my hands, he would have entered into a second confederacy with more caution.

"Stamp Office, Jan. 9, 1822.

"MY DEAR FRIEND,

"I write these few lines rather in sorrow than in anger; for I am afraid you have deceived me in a very material point. We have stated, in our Second Report, 'that it does not appear that the Commissioners had made any order (which implies request), for the Solicitor's bills, previous to the delivery of the first account on the 25th Feb. 1818.' We have also stated, that 'we have examined all the letters from the Commissioners of Stamps, handed to us by Mr. Bremner, since Feb. 1814; and the first relating to the Bills appears to be one from the Secretary to Mr. Bremner, dated July 22, 1819,' &c. I asked you repeatedly whether there were not prior letters: you stated, most positively, not. I desired that all the letters might be handed over to Mr. Mawe, for his examination. You handed to him many; but he found nothing as to this point. I entreated that you would diligently inquire, &c.; and, relying upon your assurances, and Mr. MAWE's examination, I drew the Report as stated. I will leave you to judge what were my feelings, when called before the Board yesterday; I was referred to their letter book, and, in five or six different periods of the year 1817, to letters written to Mr. Bremner, for the express purpose of urging him to forward his bills. Surely, my friend, this was wretched, and I am afraid dishonest policy; it not only DEFEATS THE PARTICULAR OBJECT, but it throws a distrust and discredit upon all your father's proceedings. I had hoped to have been able to have spoken favourably of you, but this fact, which I fear cannot be explained, has completely disabled me. If you can honestly clear up this black spot, let me hear from you soon; and believe me anxious to have been,

"Your friend and well-wisher,

"GODFREY SYKES."

The guilt of the combination which this Letter betrays, is aggravated by the official relation in which the Writer of it stood towards the individual against whom it was directed. It furnishes a key to the Commission into SCOTLAND, entrusted to Mr. Sykes and his co-adjutant Mr. Campbell. *The particular object* WAS *defeated;* but it was only for a time. It has been since accomplished. It is no secret to *you*, by what means and through what agency it has been atchieved. Mr. Sykes, as the legal guardian of the Stamp Revenue—has been always in prompt attendance behind the scenes, from the very first hour that, under *his own* Commission of INQUIRY, he became the "DEAR FRIEND" of Mr. BREMNER, until the time that he became so serviceable a witness under *yours.* Yet,—notwithstanding the zeal with which I knew he had lent himself, clandestinely, to every machination which went to effect my removal from office,—yet, from his near relation to that Board to which I lately belonged, I had hitherto spared him, in mercy, from the production of a Letter, in which, under his own name, he seals his own condemnation; and which, when published to the world, will leave him no resource, but to cover his face with his hands, and to retire for ever from the circle of upright and honourable men. It is now before the public, and, when he has finished Mr. BREM-

NER's vindication, it may furnish a subject for *his own.*

It will now be seen that it was not without reason that you recommended an increase in future of £500 a-year to the fixt salary of Mr. Sykes. The Labourer is worthy of his hire. THE PARTICULAR OBJECT having been effected, all apprehensions for its failure are now at rest, and your success may be matter of mutual salutation; but placing myself in the situation of a mere spectator, and taking into view the whole proceedings,—with the result that has followed from them,—I vow to God I would rather be the Victim, than bear about me the remorse of having assisted at the sacrifice.

I subscribe myself,

Sir,

Your most obedient Servant,

JAMES SEDGWICK.

Somerset Place.
*December* 2, 1826.

LONDON,
PRINTED BY THOMAS DAVISON WHITEFRIARS.

# VERBATIM REPORT

OF THE

# ACTION FOR LIBEL

IN THE CASE OF

# BUCKINGHAM *versus* BANKES,

TRIED IN THE COURT OF KING'S BENCH,

AT THE GUILDHALL, IN LONDON,

BEFORE THE LORD CHIEF JUSTICE ABBOTT, AND A SPECIAL JURY,

*On Thursday, the 19th day of October*, 1826.

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LONDON:

PRINTED BY CHEESE, GORDON, AND CO., RED LION COURT, FLEET STREET,

AND SOLD BY ALL BOOKSELLERS.

1826.

[*Price 2s. 6d.*]

# JAMES SILK BUCKINGHAM *v.* WILLIAM JOHN BANKES.

COURT OF KING'S BENCH, GUILDHALL, LONDON, OCT. 19, 1826.—BEFORE THE LORD CHIEF JUSTICE AND A SPECIAL JURY.

NINE Special Jurors having answered to their names, Mr. Brougham, for the plaintiff, prayed a tales, and the following Jury were then sworn:

| | | |
|---|---|---|
| Abingdon Paxton, | Thomas Pearson, | Henry Thomps, |
| John Moseley, | William Foster, | Charles Rowley, |
| Benjamin Adam, | Edward Hampson, | Robert Cockburn, |
| Thomas Whiteley, | Philip Gillespie, | Joseph Montley. |

The case for the plaintiff was conducted by Messrs. Brougham, Hill, and Pattison; Mr. Gurney and Mr. J. Parke appeared for the defendant.

Mr. PATTISON.—May it please your Lordship, and Gentlemen of the Jury, In this case James Silk Buckingham is the plaintiff, and William John Bankes is the defendant. The declaration states, that the plaintiff was about to publish a Book, called '*Travels in Palestine*'; that, preparatory to the publication of the said book, the plaintiff put an advertisement into a newspaper, known by the name and title of the 'Calcutta Journal'; but the defendant intending to injure the plaintiff in the sale of the said book, did compose and publish a certain false and malicious libel, in the form of a copy of a letter, (which it is not necessary that I should now read,) dated, "Thebes, June 12, 1819." In this declaration the defendant has pleaded several pleas; he has first pleaded that he is not guilty of *publishing* this libel; secondly, he has pleaded that the whole libel is *true*, and he avers matter in support of the allegations contained in it; the third plea states generally, that the *whole libel is true*; the fourth and fifth pleas justify certain parts of the libel. To all those pleas the plaintiff replies that they are *not true*, and thereupon issue is joined.

Mr. BROUGHAM.—May it please your Lordship, and Gentlemen of the Jury, As I am very much afraid, that in the conduct of this cause, I shall have to occupy the attention of his Lordship and of you for some considerable time, I shall not preface the case which I have to lay before you with one single observation; I shall state plainly what that case is; I shall explain to you the situations in which these parties stood, one towards the other; I shall describe to you from his own words, and under his own hand, the conduct of the defendant towards the plaintiff, whom I; upon the present occasion, have the honour to represent; and having done so, I shall then appeal to you to make such comments upon that conduct, and to draw such inferences from it, with respect to the reparation due to Mr. Buckingham, as your judgments shall suggest; I shall then dismiss the case into your hands with an entire confidence that you will do him ample justice.

The plaintiff, Mr. Buckingham, is probably not wholly unknown to some of the gentlemen of the jury. He began life, at a very early age, as a sea-faring man, and, in due course of time, obtained the rank of a captain, which situation he held for some time, and, during that period, had been employed in those speculations of trade, which are necessarily connected with his profession. He had resided for a considerable period of time in the East, and had become intimately acquainted with the navigation of the seas in those parts; he was also well acquainted with the manners, languages, habits, and commercial dealings of the natives. A treaty having been negociated between the Pasha of Egypt and certain merchants in those parts, for the safe transit of merchandize across the Desert, it was considered highly expedient that the British merchants

resident at Bombay should become parties to that treaty. Mr. Buckingham, whose experience and competency were well ascertained, was pitched upon as the agent to carry into effect a treaty which he, in connexion with others, had entered into, and he, therefore, undertook, without any remuneration, save the expenses of his journey, to travel over-land to Bombay, in order, as I have before said, to carry into effect a negociation to which he himself was a party, and in which, if carried into effect, he was to hold a share. He accordingly set out from Egypt in the latter end of the year 1815, on his journey to Bombay, and having met with the accidents which are incidental to such journies by land and by water, he was often delayed, but at length arrived in Syria, where still further delays were opposed to his progress. In consequence of the unhealthy nature of the climates through which he had to pass, he fell sick twice, and was for some time confined by illness; this, and other obstacles impeded the direct course of his journey. On his arrival in Syria, he learnt that the death of one Pasha of Damascus, and the succession of another, (events, Gentlemen, which, you are well aware, occasion in those countries tumults, and even revolutions,) rendered travelling through certain parts of that country quite impracticable, at least for an European. At one place, Bushire, he was delayed, I think about two months, in consequence of the impossibility of procuring a direct conveyance to Bombay from that port in the Persian Gulf. In consequence of the apprehension that those delays would retard, if not entirely prevent the accomplishment of his journey, Mr. Buckingham determined to forward, if possible, the despatches, the conveyance of which was the principal object of his journey, and the speedy arrival of which was a matter of great importance to himself, as well as to others. He, therefore, despatched a native messenger (who, we all know, in the then unsettled state of the country, would not be exposed to so much personal interruption as a stranger, and particularly as an European, and could, therefore, proceed with greater safety and rapidity,) with a copy of the treaty, and some letters to a mercantile house in Bombay, to the British Consul at Aleppo, to be by him forwarded from thence to their destination. The result of this proceeding was, that the despatches arrived at Bombay at a period considerably earlier than that of Mr. Buckingham's arrival, which (owing to the delays that I have already mentioned) was not until the latter end of the year 1816.

During that year, chance threw the plaintiff in the way of Mr. Bankes, who was then travelling for his amusement, pleasure, and instruction.—Mr. Buckingham made acquaintance with him at a convent, near Jerusalem; and as may happen to any two persons in the rank of gentlemen, (for although I am ready to admit that between my client and the defendant there was a difference in point of wealth, yet the station of each was that of a gentleman,) they became very intimate, and the intercourse between them was rendered more close no doubt from the fact of their being the only Englishmen at that time in Jerusalem.—They joined in excursions round the neighbourhood, they visited all the interesting remains of antiquity, both sacred and profane, in the environs of that city; and, among other excursions, they made together a tour through a place seldom visited, I believe only once or twice for a great number of years, by foreigners, namely, the country east of the Jordan, now called the Hauran, but which was in ancient times termed the Decapolis, from the circumstance of there having been in those days no less than ten large cities in that small Province, one of the most interesting of which was called Geraza, and is now known by the name of Jerash. This city they visited together, but the whole tour, which was prolonged by an accident that Mr Buckingham had met with, occupied only seven days out of twelve, which was the whole of the time that the plaintiff and the defendant passed together upon this occasion. They then parted, and after a separation of a few weeks they met again, and I believe even a third time.—During those occasional separations, a correspondence was kept up between them. From that correspondence, Gentlemen, I shall read some extracts, which will illustrate the footing upon which those two gentlemen stood. For although Mr. Bankes has thought fit to represent Mr. Buckingham in terms to which it will

be my painful duty to advert,—although it may have suited Mr. Bankes, by an extraordinary species of recollection to fancy that Mr. Buckingham was in a dependent situation upon him, I shall satisfy you, Gentlemen, from Mr. Bankes's own letters, when his recollection of what passed was not two years, but only three weeks old, that it was then only a recollection of their mutually agreeable acquaintance, of their amicable intercourse, and of the reciprocal benefit which might result from it, with perhaps, in the mind of Mr. Bankes, some ideal difference of station and fortune; but that the employment of Mr. Buckingham by Mr. Bankes, or his dependence on him, was the last thing which could find a place in the imagination of this gentleman. The first letter that I shall read to you, Gentlemen, is dated "Acre, February 28, 1816." Mr. Bankes having parted with Mr. Buckingham on the 4th of February, owing to the accident of which I have already made mention, addresses Mr. Buckingham thus:—

"My dear Sir,—There is some fatality about my travelling engagements. I never made one in my life but circumstances turned out so as to prevent me from fulfilling it. Another letter from Seyde, and, above all, the *radical* change of the weather, determined me upon deferring my scrambling expedition to the Hauran, and turning at once upon the coast. I did not, however, give up the idea of JOINING YOU at once, but made an attempt from St. Hoor, where that excellent man, Hadjee Hamet, entertained me with the same hospitality, and almost affection, which you had described to me."

This shows that Mr. Buckingham must have before made Mr. Bankes acquainted with the nature of his accident, and the conduct of his host.

"Beisan, which is the ancient Scythopolis, is within a day's journey, and in the same jurisdiction; it lies in the plain of the Jordan, and is within a long day of Salt. I resolved to go to Beisan, and so MAKE MY WAY TO YOU, if I could find any body to *carry me*."

You see from this, Gentlemen, that the great object which Mr. Bankes had in view was to *join* Mr. Buckingham; he regretted the accident which had prevented this, and expressed his anxiety to shorten the interval of their separation. He says,

"I resolved to go to Beisan, and SO MAKE MY WAY TO YOU, if I could find any body to *carry me*. When I came, I found that nobody would undertake it, for but the day before (my good fortune always brings me a day before, or a day after such adventures), the Bedouins had completely *pillaged* and *stripped* a body of merchants from Damascus, within two hours of the village, so there was an end of that scheme."

From this it appears, Gentlemen, that Mr. Bankes would have *joined* Mr. Buckingham if he had not been prevented by those impediments, to which all travellers in those countries are liable.

The next sentence in this letter will, however, place beyond all doubt the degree of intimacy which subsisted between those parties, and will give a direct and positive contradiction to the assertion, that one of them was a dependant of the other. It will show you, Gentlemen, that the plaintiff *requested* the defendant to do that which he would not have taken the *liberty* of asking him to do, if there was any, the least foundation for the charge of dependency, which Mr. Bankes has, at a subsequent time, thought proper to make. He says,

"I am at a great loss to know what I ought to do with the baggage which you left in Antonio's charge; I cannot trust it alone to Damascus, and yet am afraid that you will feel embarrassed without it, on your arrival there. As I reckon that you will pass from thence across to Seyde, I shall take it with me so far, and leave it in Lady Hester Stanhope's charge. As you have no *visits of ceremony* to make at Damascus, perhaps you may continue your Bedouin habit during your short stay there, without inconvenience, (and I am disposed to hope that your stay there will be *as short* as possible)."

Short as Mr. Buckingham's separation from Mr. Bankes was, you see, Gentlemen, in this letter, that Mr. Bankes expresses a desire that it should be still shorter. The letter goes on,

"I shall remain with Lady Hester Stanhope about five days, and if I do not turn round for Damascus, which will depend a good deal upon her advice and upon circumstances, I shall make my way pretty direct for Aleppo, lengthening out my road by excursions, however, here

and there, to give you time to come up to me, so that I trust that at the latest we may meet in Aleppo, *and make our journey to Palmyra together.* Believe me, dear Sir, most faithfully your's, WM. JOHN BANKES."

After this, Gentlemen, the parties met again, and having continued together for a short time, again separated, each to pursue his own route. The plaintiff, however, received, soon after, a letter from the defendant, dated Damascus, April 12th, 1816, which however I do not think it necessary to read for the present: suffice it to say, that it begins in the friendly words, "My dear Sir": it laments the Plaintiff's illness, regrets their separation, and after entering into some observations respecting places which both had visited, concluded with these words, "Enter old Chaboceau and the toad-eater, so adieu," alluding, of course, to some person known to them both by this jocular designation.

Gentlemen, sufficiently long was Mr. Buckingham's stay at Jerash, when he accompanied Mr. Bankes, sufficiently minute were his observations, to satisfy himself as to the importance and value of the antiquities which were to be found there: but not sufficiently long was his stay, nor sufficiently minute were his observations, to enable him to do the subject that justice which it demanded; for, on looking back upon the scenes which had presented themselves, and upon bringing his recollection to bear upon the observations which he had made, he found that it was absolutely necessary to pay a second visit, in order to make his remarks more in detail, and to correct the errors into which the hasty visit that he had paid must inevitably have led him.—This he was induced to do with the view of giving the result of his observations to the public (1). The plaintiff, accordingly, visited

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(1) Mr. Brougham did not recollect that Mr. Buckingham's subsequent visit to Jerash was not as a matter of curiosity, or for the purpose of correcting his notes on it merely, but in consequence of being driven out of his route, and being compelled to pass through it a third time: when, being on the spot, he profited by the occasion, to make the notes and corrections referred to. To show that this is not an explanation now for the first time made of this change of route, the following extract from the 'Calcutta Journal' of November 9, 1822 (in answer to certain accusations founded on Mr. Bankes's libel, and repeated by the 'John Bull' in India), is given at length. It is also contained in the Appendix to the 'Travels among the Arab Tribes,' published in 1824, and will be found at page 647 of that work. It is as follows:—

"All the reasons which forced me to go to Jerusalem (where I did not go by choice) are detailed in the 'Travels in Palestine.' When there, the inducement to go with Mr. Bankes by Jerash and the east of Jordan, to which he invited and pressed me for his own advantage, as he could not speak a word of the language, was, that while the whole of the country under the Pasha's dominions was unsafe to move through, the independent country of the Arabs on the east of Jordan was subject only to the ordinary dangers of Bedouin intruders, not half so important as those of political disturbances in the peopled territory. In doing this, therefore, I was actuated by strict attention to the trust reposed in me, though I gratified my curiosity at the same time. On coming near Tiberias, it was my intention to part from Mr. Bankes and to proceed straight on to Damascus, and thence to Aleppo, without a moment's loss of time; when the unfortunate accident detailed in the printed volume, of the fall of my horse, and a severe injury sustained by me from the fall, compelled me to turn into Nazareth to receive medical aid and repose, till the wound was sufficiently recovered to proceed. After some delay and recovery there, another attempt was made to get to Damascus and Aleppo by the way of Tiberias, which was interrupted by the road being infested with robbers, so that my guides would not proceed, and we were obliged to retrace our steps. An attempt was then made to go with a caravan from Nablous, but this was also frustrated. The details of all these interruptions, and their causes, are given in the printed volume already before the world, and cannot be unknown to those who have read it.

"Finding no hope, therefore, of getting on as expeditiously or as straightly as I had expected by Aleppo and Mesopotamia, some other route was necessarily thought of; and meeting with a Christian Arab at Nazareth, who undertook to act as my guide in a journey from thence to Assalt on the S. E. of the Dead Sea, where he assured me I could procure Arabs who would take me straight across the Desert from thence to Bagdad; the plan appearing feasible, and on ring a hope of my yet following soon after the letters sent to that city, I pre-

Jerash a second time, made ample notes of the observations which then presented themselves, corrected the bearings of the buildings taken on his first visit, these bearings taken on the first visit being so very imperfect, that Mr. Buckingham had actually found himself under the necessity of remodelling the ground plan constructed by the joint exertions of himself and Mr. Bankes, and of laying down an entirely new ground plan of the City of Jerash, according to the bearings accurately taken at the second, and less interrupted visit.

When Mr. Bankes wrote the libel, of which my client so justly complains, Mr. Bankes ought to have known that the facts were otherwise than he had stated them: I say he *must* have *known* the facts to be otherwise, unless, indeed, he had forgotten a great deal; and, I am sure you will agree with me, Gentlemen, that he must, when I tell you, that he had actually read,—when I shall show you, under Mr. Bankes's own hand, that he actually refers to the notes made by my client at the second visit to Jerash. Mr. Bankes's reference is made to certain notes on a place called Adjeloon, which begin on the back of the very page on which the description of Jerash, drawn up from Mr. Buckingham's second visit to that place, ends; so that, as he admits in writing

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pared for this really perilous and hitherto untried journey. The whole of this was subsequent to the period at which the Travels in Palestine close, but notes of all the time are fortunately preserved. My small stock of baggage was left with Mr. Bankes, to be taken by him to Damascus, the only place to which I could return in the event of my being driven back, which it was necessary to provide for; and in the dress of a Bedouin Arab, without servant, groom, interpreter, or assistant of any kind beyond that of the guide, I set out, with a poor horse (to avoid all temptation to robbery), without a single change of linen, and only bread, water, and dry dates, in a sack, to undertake a journey in which there was a positive certainty of much suffering, imminent risk of plunder and murder, and nothing then known but a waste country and a sandy desert to see! These were the risks which I encountered to fulfil to the best of my ability the second portion of the trust of Briggs and Co. (the first having been discharged), and force my way to India (with the additional risk of banishment also when I got there), to do a vast benefit to these merchants, for the paltry consideration of a slave's allowance, bare maintenance while employed; and even this I should never have accepted, but that, like many honest and unfortunate men before me, I had not the means to procure bread, except at the risk of my life for the benefit of others.

"I passed, after much difficulty, five or six days' journey south-east of the Dead Sea, near to Karak Moab; but here new obstacles arose, and we were driven back, being obliged to fly and retrace our steps to Assalt, an independent mountain station of Christian Arabs, who are almost constantly at hostility with one or other of the Mohammedan tribes of Arabs around them. We were detained here some days, and finding further progress to the southward impracticable, I determined on going to Damascus through the Hauran in nearly a straight line, so as to try again to reach Aleppo. It was in this *retreat*, if it may be so called, that the third visit to Jerash was made, not to gratify an idle curiosity, but because it lay in the direct route, and could not without a detour be avoided. Adjeloon fell into the same track, and the whole of the Hauran that was subsequently traversed was in the straight prosecution of my journey. During this stay at Damascus, my meeting with Mr. Bankes took place, on the 23d of March, when all the notes of the journey made during his absence were shown to him, to which he subsequently referred in his letter of April 12; and from that time onward, during which I was detained by illness with Lady Hester Stanhope, and by various obstacles elsewhere, not a day was lost in getting to Aleppo as fast as possible, where I arrived safe, after greater dangers than almost any former traveller in Syria had ever experienced, in the month of May 1816.

"Here Mr. Bankes again met me, arriving a few days after I reached the town: but to show how lightly the greatest objects of curiosity weighed in my mind, compared with the faithful discharge of my duty, I may mention this fact, that Mr. Bankes was pressingly urgent for me to accompany him to Palmyra, a journey of four or five days only; and although the ruins of that city are perhaps better worth seeing than all Syria put together, I resisted his solicitations, and, rather than sacrifice even so small a portion of time, lost an opportunity of seeing the finest ruins in the world, and went with a dull and wearisome caravan through the only route then open, of Orfa, Diarbekr, and Mardin, to Mosul, in Mesopotamia."

that he had seen and read the one, it is hardly possible that he should not have seen the other.

Mr. Buckingham having, after this, extended his tour, and visited several of the most interesting districts of the East, in each of which he took notes of such places and circumstances as in his opinion were deserving of observation, and at length arrived in India, where, having shown the notes of his Travels to several persons eminent for their rank and learning, they were deemed sufficiently interesting and important to be sent forth to the world, as a valuable addition to the stores of rare and instructive information. In consequence of the opinion thus honestly communicated to him, Mr. Buckingham resolved to publish a book of travels, and he accordingly inserted in a Calcutta newspaper, of which he was then the proprietor and editor, an advertisement, stating that his 'Travels in Palestine' would be published as speedily as possible. Mr. Bankes appears to have first seen this advertisement in Egypt; and there was given in it a list of the chapters, among which, it did so happen that there were two or three that referred to Jerash, the ruins of which he had, in company with Mr. Bankes, visited; although all the other chapters related to places which Mr. Buckingham had visited without Mr. Bankes, their joint journey forming, indeed, a period of seven days only, out of a tour extending over more than ten weeks.

The Gentlemen of the Jury will have the goodness particularly to observe, that this advertisement professed to give an account of a tour extending over ten weeks of time, seven days of which only had the plaintiff been in Mr. Bankes's company. Mr. Bankes seeing this advertisement, seeing that a *part* of the work related to Jerash, although he knew, full well, that Mr. Buckingham went there a second time without him, although he was well aware that, on this second visit, Mr. Buckingham had made more full and accurate observations, although he was well aware that Mr. Buckingham had committed those observations to writing, and that he, Mr. Bankes, had had those written observations in his own hands; still, with a jealousy, to which I know no parallel, with an irritability as to the claims of another to the mere privilege of seeing for himself, and unaccompanied by Mr. Bankes, any thing which he had once looked at in his, Mr. Bankes's, company—to go to any place—to dare to tread upon the ground hallowed by the footsteps of Mr. Bankes—to dare to make any observations upon places ever described by his pencil, or even in his private conversation, he actually, Gentlemen, gets into a passion, (I know no other equally appropriate phrase, by which to characterize it,) at the bare thought of any interference with his privileged ground; part of the Holy Land, Gentlemen, no doubt, in his eyes, deriving additional sanctity from the fact of his having once honoured it with *his* august presence!—That any person should even *visit* the place, much more *write* about it—that any person should visit it, and avail himself of his faculties to make observations upon it, was enough to enrage Mr. Bankes beyond all bounds. But that Mr. Buckingham should write one word, much less give any thing like a ground-plan of Jerash, was too much to bear; and Mr. Bankes, without waiting to look at the book which the advertisement announced, without waiting to see if Mr. Buckingham had availed himself of any thing which was not his own property, the result of his own observations and researches—without sending a note or message—without writing a letter to Mr. Buckingham, who was his intimate friend, and with whom (I have it under his own hand) Mr. Bankes had had the most familiar intercourse—without asking the man, for whom he had once professed an unbounded friendship,—for whom, when they last separated, his friendship was apparently undiminished; and without asking this man how he got his materials for the work,—without asking him, as a friend, whether they were the result of his own labours or not,—Mr. Bankes wrote such a letter, as I venture to say, he must, himself, now wish never to have been guilty of,—such a letter as the plaintiff had never before nor has since received,—such a letter, as *no* man (I appeal to you, Gentlemen of the Jury, to bear out the truth of my assertion) could receive from one who had once professed to be his friend, without feeling his heart deeply

lacerated by its imputations; and, lest any thing should be wanting to make rankle the deep wound thus inflicted by one who had formerly been a friend, this letter was not intended for his eye alone,—as a copy of it had been given unsealed and open to a gentleman not on terms of intimacy with the plaintiff,—to the friend of Mr. Bankes—to a gentleman in the employment of the East India Company, between whom and Mr. Buckingham I may, at least, venture to say there was no great cordiality. This letter, Gentlemen, was given to the person to whom I have alluded, for the purpose of showing, and probably with instructions to show it in India, as the opinion entertained respecting Mr. Buckingham by Mr. Bankes, a gentlemen who had had the best opportunities of setting a proper value upon his character. The letter, which I now pronounce to be a foul and a slanderous libel, does not, Gentlemen, begin as you might naturally expect from the style of the other letters which had passed between the plaintiff and the defendant, and some of which I have already read to you, with "My dear Sir," or even "Dear Sir," but mark—it begins thus——"Mr. Buckingham"!—It is dated, "Thebes, June 12, 1819," and this is the opening paragraph:

"Mr. Buckingham,—After some anecdotes respecting your conduct, which you cannot but suspect have come, however late, to my knowledge before this time, you cannot expect that I should address you otherwise than I should the *lowest of mankind*. It is indeed with reluctance that I *stoop* to address you at all. It will require, however, no long preface to acquaint you with the object of this letter, since your own conscience will point it out to you, from the moment that you shall recognise a hand-writing which must be familiar to you, since you have copied it, and are about to turn the transcripts to account."

Gentlemen, there is no ground whatever for the imputation conveyed in the passage, which I have read to you. This was written because Mr. Buckingham had announced his intention to publish certain observations on Jerash; and Mr. Bankes, by this statement, broadly charges Mr. Buckingham with having larcenously used manuscripts confidentially intrusted to him. Gentlemen, can you believe Mr. Bankes when he says, that he did not expect Mr. Buckingham would have published any account of his visit to Jerash? It followed as a matter of necessity, that when Mr. Buckingham published the observations of his travels, he must have published, as he had always intended, his description of the ruins of Jerash. Mr. Bankes must have known this, when he thus, without waiting for the appearance of the plaintiff's book, foully slandered him by anticipation:

"You have hoped that the distance of place would befriend you; you have hoped that I should shrink from proclaiming that I have been imposed upon; it would have been far more politic in you to have shrunk from being proclaimed the man who has imposed."

Here, Gentlemen, the defendant again assumes that he has been imposed upon. He assumes, without having ever seen the book about to be published, not that it was a common and ordinary plagiarism—no such thing—but that it was the result of a larcenous (I repeat the word "*larcenous*," for I cannot find any other word which could adequately express the notion of a base petty theft that must have pervaded the mind of Mr. Bankes when he penned this letter) using of manuscripts confidentially intrusted to the plaintiff. Mr. Bankes assumed that which cast upon my client the most foul and vile imputation; but if he could have restrained his indignation, or rather, I should say, his irritability and jealousy, until after the book had appeared before the world, he would have felt convinced, whatever he might say to the contrary, that there was not the shadow of a shade of ground for supposing *any portion* of the work of Mr. Buckingham to be the result of their joint visit to Jerash.—But no! That the work professed to give *any* description of Jerash was enough to excite, in the breast of Mr. Bankes, every feeling of jealousy, and an utter disregard of how the fact might stand. The letter goes on, Gentlemen—

"In that advertisement by which you announce *as your own* the *works of another*, you have at least spared me the humiliation of being named in the list of your friends."

Now this, Gentlemen, is meant for a very cutting sarcasm—for a very keen and barbedly-pointed sneer. As a plain man, I take leave to make a plain

observation, at which I hope Mr. Bankes will not take offence. It certainly does strike me, that if Mr. Buckingham, in his advertisement, had inflicted upon Mr. Bankes what he deems the *last humiliation*—if the advertisement had mentioned the *name* of Mr. Bankes,—if it had stated that he and Mr. Buckingham had visited Jerash,—if it had stated that Mr. Buckingham had been much aided by his, Mr. Bankes's, company,—that he had derived considerable benefit from Mr. Bankes's judicious remarks, and that he had profited by the results of his learned curiosity,—if, Gentlemen, Mr. Bankes had, in this advertisement, been subjected to *such humiliations*, it does somehow or other strike me that this letter never would have been written. But, unfortunately for Mr. Buckingham, his advertisement contains no allusion to the obligations that he owed to Mr. Bankes; it does not even mention the name of Mr. Bankes; but it announces that which is more galling to Mr. Bankes than (if possible) any act of omission,—it announces that Mr. Buckingham had, unaccompanied, paid a visit to Jerash—the sanctum sanctorum of Mr. Bankes. As this advertisement contains that which, no doubt, must be very cutting to his self-love, I cannot but congratulate him upon having escaped the *humiliation* of having, as a set-off against the *other* humiliations inflicted upon him, any mention of, or even the slightest allusion made to his name.

"Though the motive of this," he continues, "is sufficiently obvious, and it furnishes in itself both a proof and an aggravation of your culpability, yet some of those who are made to appear in that list, would rather, I am persuaded, that you had invaded their property as you have mine, than have subjected themselves to so unmerited a stigma."

You see, Gentlemen, of what materials these travellers are made; Mr. Bankes is not the only one in whom jealousy and irritability are so prominent. Those qualities belong more or less to the whole race of travellers. Mr. Burckhardt, better known by the name of *Sheikh Ibrahim*, was one of the chosen few who had ever visited the sacred ground; and Mr. Burckhardt having got information that Mr. Buckingham had traversed it, and was about to turn his travels to account, Mr. Burckhardt, who, up to that period, had been upon intimate terms with Mr. Buckingham, immediately commenced writing a series of abusive letters against Mr. Buckingham, though certainly not more abusive than the letter which is the subject of the present action. Mr. Bankes, not satisfied with his own insinuations against my client, and with lashing him as he can, takes advantage of the moment when Mr. Burckhardt can no longer answer for his aspersions, when he no longer lives to have his calumnies refuted and felled down by the strong axe of plain truth, when he no longer lives to be convinced to his face that he has calumniated Mr. Buckingham, and to be compelled to retract the slanders which he has uttered,—when that man is no longer above the surface of the ground to answer in his proper person for his foul and unfounded aspersions, Mr. Bankes ransacks the tomb of the dead, he rakes out of the dust the calumnies of private letters, aye, private letters,—not like the libellous letter of Mr. Bankes, delivered unsealed and open, with instructions to the bearer to publish the contents to the world,—and having extracted from these private letters the long kept spleen of the dead, he incorporates it with his own living wrath, and distils the concocted venom of both, to ruin, if he can, the reputation of his former friend.

"One amongst the number," he says, "(whom you would not have dared even to allude to had he been alive), is unhappily unable to repel the imputation in his own person,—I mean the late Mr. Burckhardt, whom you so impudently cite as your bosom friend. The boast is rash and ill-timed. Are you not aware that copies of a letter are extant in which he styles you a villain, in which he says, 'the rogue can be brought to a sense of duty only by a stick'? Do you mean, then, to publish your own disgrace by letting the world know how well you were known to that excellent person, who, during the two last years of his life, lost no opportunity of testifying his contempt and aversion for your character? Do not imagine that these sentiments were confined to the page of a single letter; Sheikh Ibrahim was too open and too honourable to wish others to be deceived as he had been for a time himself. Had his letters to me reached me sooner than they did, I should have had timely warning to beware

how I trusted you, and you would never have had that opportunity which you have seized of abusing my kindness and confidence."

Gentlemen, I assure you I know not in what language to comment upon the conduct of a man who makes the letter of a person now no more, the vehicle of conveying, towards another gentleman, words the most gross and unbearable that the human tongue can utter. I had rather not give utterance to what I feel upon such conduct; and I shall pass it by with this one observation, that the defendant owes it as an act of justice to produce that letter in evidence, and thereby clear himself from all suspicion of having calumniated the dead in order to wound the feelings of one of whose success he is jealous.

I have now stated to you, Gentlemen, the charge made by the Defendant against my client. I have called your attention to the general bearings of it, but now he comes to particulars:

"It is beneath me to expostulate with you, but I will state some facts to yourself which I have already stated to others,—that the journey beyond the Jordan, to D'Jerash and Oomkais, was arranged, and the Arabs under engagement to conduct me thither, before I ever saw you; that you introduced yourself to me by a letter, stating that you were intimate with some of my best friends, and studiously concealing from me (both then and afterwards), that you were in any person's employ."

Mr. Buckingham, Gentlemen, denies most positively that he ever made a *secret* of his employment. This statement is a mere fabrication; so far from Mr. Buckingham having studiously concealed his employment, he openly and avowedly proclaimed his destination, and the object of his journey, and now challenges Mr. Bankes to prove that any concealment had been practised. What motive could Mr. Buckingham have for concealment? His mission was most respectable.—It was well known at Alexandria,—it was well known at Bombay, the place of his destination; and that mission was as little matter of shame to Mr. Buckingham, as Mr. Bankes's purpose was matter of shame to him.

"You introduced yourself to me by a letter, stating that you were intimate with some of my best friends."

Here, Gentlemen, is an insinuation, that Mr. Buckingham was sailing under false colours; but I shall prove to your perfect satisfaction, that Mr. Buckingham *was* intimate with Mr. Bankes's "best friends." He was intimate with Colonel Missett; with Mr. Burckhardt he was very intimate, and in almost daily intercourse. Thus commenced the intimacy between Mr. Bankes and my client. That the acquaintance was *courted* by Mr. Bankes, that during the short intervals of their separation, he was anxious to *rejoin* Mr. Buckingham, and that he regretted the impediments which had opposed his *wishes*, Mr. Bankes's own letters most clearly demonstrate. Those letters I have read to you, Gentlemen, and it is therefore unnecessary to comment upon them; they stand in need of no illustration,—they speak for themselves in language perfectly intelligible.

"That it was at *my invitation* (I being always under the supposition that you were a free agent), that you went with me, having previously agreed to take down my notes and the journal when I should wish it."

Gentlemen, did any man living ever hear of an amanuensis being hired for a tour of seven days? The thing is wholly incredible,—it is not worthy of refutation. Who took down Mr. Bankes's notes before he saw Mr. Buckingham? Who took down his notes after he and Mr. Buckingham separated? Mr. Bankes himself. What evidence then is there for the assertion, that he had deviated from his usual practice, and hired an amanuensis for those seven days? Mr. Bankes asserts in his letter, that Mr. Buckingham was employed by him in an almost *menial* capacity.—If such were the fact, I ask my Learned Friend to show what *salary* Mr. Buckingham had received.—My Learned Friend can, I am certain, show nothing of the kind; and if I had no other reason than Mr. Bankes's silence upon *that* point, at a moment when he was raking up the ashes of the dead, in order to procure materials of invective

against my client, I should feel perfectly satisfied that no salary had been paid to Mr. Buckingham. That being the case, can *you*, Gentlemen, can any man who tries the assertion of Mr. Bankes by the rules of common sense, give it the slightest credence? But, says Mr. Bankes,

"The whole expenses of that journey were upon me."

Gentlemen, assuming this to be true, I cannot imagine that the untutored Arab of the Desert would upbraid a man with hospitality of this kind. I am sure that in a country of which Mr. Bankes ought to know something, in a country where the refinements of Oriental politeness are but little known—in this country of plain honest hospitality, no man, after quarrelling with another, even when he had good grounds for the quarrel, would ever visit upon one who had formerly been his friend, nay, not his friend, but his guest,—no man would visit upon his former acquaintance, as an aggravation of his conduct, the hospitality which he had experienced at his hands. "The whole expenses of that journey were upon me." Gentlemen, the fact is *not* so: Mr. Buckingham did pay his half of the expenses of that tour. If by "expenses" Mr. Bankes means the *preparations* for the whole tour, the Arab guides, interpreters, the purchase of horses, and I know not what; my answer to Mr. Bankes is plainly this:—Your tour extended over several weeks, of which Mr. Buckingham was your companion for six or seven days only: those expenses were incurred, and must have been defrayed, if Mr. Buckingham had not accompanied you; but Mr. Buckingham has paid you his proportion of the expense during the time that he accompanied you, and thus relieved you from some expense which you must have defrayed, if he had not accompanied you. But what, Gentlemen, do you think the expenses of this seven days' tour amounted to? Every man must be aware that travelling in a country where there are no inns, no post-horses, no chamber-maids, no waiters, no ostlers, no boots, must be trifling indeed.—In those countries, when a man knocks at your door, he calls not with a long bill, but he comes perhaps with orders to bring your head. In those countries, the state of society is such, that hospitality to travellers, which in civilized countries is an ornament, becomes a matter of duty, a matter of absolute necessity. There, it is either hospitality or war: but as to *expense*, it is out of the question: the expense consists of some trifling presents to the natives, and a few piastres to the occasional guides.—The whole expense of this seven days' tour, amounted only to 216 piastres; half of which enormous sum, (about 2*l.* 10*s.* English,) Mr. Buckingham paid to Mr. Bankes! If I am asked, Gentlemen, whether I can give *proof* in a Court of Law, that Mr. Buckingham has paid that sum, I must at once admit, that it is out of my power to do so; but, for my own part, I feel perfectly convinced, that the fact is so, and I shall state to you freely what are the grounds of my conviction. The first, is, (and that would be sufficient of itself, in a case of greater importance) Mr. Buckingham's positive assurance that he has done so: and the next is, an entry to that effect in his account of his travelling expenses.—You may easily see the difficulty, Gentlemen, of a man proving such a transaction as this, in any other way, even if the parties had never been on terms of intimacy; but that difficulty is increased, when you consider, that the transaction was between men who lived upon terms of the most friendly intercourse, who addressed each other, "My dear Sir," who mutually communicated to each other their most private observations.—Between such persons, it is not very probable that stamped receipts should have passed, even if stamps could have been procured in the country. On their return to the place from which they had set out, the expense of the journey was ascertained. Mr. Buckingham paid his share, and there the matter ended.—I doubt much, whether, in this country, fellow-travellers keep their accounts much more accurately. I admit, that as matters have turned out, it would have been but an act of proper prudence on the part of Mr. Buckingham, to have required some voucher from Mr. Bankes; but that he did not so, is only a proof of the mutual confidence that subsisted between them.

"The notes and the journal," continues Mr. Bankes, "were in great part taken down from

my mouth (especially what relates to D'Jerash), with the exception of that of the two or three last days, which were written with my own hand, and afterwards copied fair by you."

Now, observe, Gentlemen, the notes and the journal were either *written* by Mr. Buckingham, to the dictation of Mr. Bankes, or by Mr. Bankes himself; so says Mr. Bankes.—Then, of course, the notes so written by Mr. Buckingham, and the fair copy made of Mr. Bankes's notes, must, if Mr. Buckingham were employed as the amanuensis of Mr. Bankes, be in Mr. Bankes's possession. They will of course be produced.—If not, there is an end of that part of the foul accusation against my client, that he has surreptitiously, I shall again repeat the word which most adequately expresses Mr. Bankes's imputation, that Mr. Buckingham has *larcenously*, for the lucre of gain, turned to his own account, manuscripts which had been confidentially entrusted to him. If my Learned Friend, Mr. Gurney, shall produce those notes, (if such were ever in existence,) we are in a condition to refute the foul slander; for not only was the advertisement sent forth, but the book itself was actually published, before my client received Mr. Bankes's letter.—The advertisement appeared in India, in October 1818, and the manuscript arrived in England, in the early part of 1819, full six months before the date of Mr. Bankes's letter.—Such as the manuscript left India, such is the book published in England; such was it prepared, long before the plaintiff could by possibility, have known of the charge made by the defendant. I say, Gentlemen, let that book, so proved to have been written, so known to have been published, *before* the receipt of Mr. Bankes's most abusive letter,—let that book, I say, be compared with those manuscripts, which, if Mr. Bankes's statements be correct, *must* be in his possession; and if it should be found that, chapter after chapter, as it is insinuated, but not so pleaded; or if page after page, (as it is pleaded,) of the printed book, shall be found to correspond with the notes written by Mr. Buckingham to the dictation of Mr. Bankes,—if there should exist those coincidences that identify them, I shall be ready to admit, not that Mr. Bankes would be justified in addressing any gentleman in such language as is contained in this scandalous libel, but I shall be ready to admit, that Mr. Buckingham's conduct furnished some colour for such charges.

Gentlemen, when two men enter into a discussion upon the same topic, and communicate to each other the observations which present themselves to their minds, the observations become common property; what was yours becomes mine; and even in a few hours, but much more so after the lapse of years, it is impossible to say to whom originally belonged the remark or allusion which appears in the portfolios of both. I do not mean to deny, that one or two observations contained in Mr. Buckingham's book, might by possibility be found upon Mr. Bankes's manuscript notes; but I challenge my Learned Friend to show me, in the language of the record, that page after page of the printed book corresponds with the notes taken by Mr. Bankes.—If my Learned Friend cannot do that, and I am *sure* he cannot, then must this publication be deemed a foul and malignant libel. I particularly pray your attention to the next passage of this letter:

"But, above all, that the plan of the ruins at D'Jerash was constructed and noted with my own hand; and that all the assistance that I derived from you, even in collecting the materials for it, was in *your* ascertaining for me the relative bearings of some of the buildings with *my* compass."

Now, "ascertaining the relative bearings—" I consider to be a very great assistance in laying down a plan of this description. A man may know a great deal about ancient languages, a great deal about the manners and customs of different countries; he may be well acquainted with old authors; he may be fully competent to the *very arduous* task of keeping a manuscript journal. All those capacities he may have; and yet, when he comes to make a plan of a city, he may find that the honest sailor, who has, for a number of years, been accustomed to the use of the compass,—who can, by its assistance, steer his bark through the sea, and guide over the desert, the camel, not unaptly called

the *ship* of the desert, he might find such a man's assistance not only necessary, but absolutely indispensable to him in drawing a plan. I do not mean to say in the *mere drawing*, but in the *laying down:* for the drawing, which consists in making a few figures, and circles, and lines, is a matter of minor consideration; *every thing* depends upon the relative positions of the objects, upon the admeasurements, and upon the relative bearings and distances being accurately taken. Mr. Bankes does not seem to think so, when he says, "You *only* took the bearings." My client *only* did that which, it appears, Mr. Bankes himself could *not* do. Mr. Bankes might with as much justice say to the man who had afforded him the rights of hospitality, "You have *only* given me meat, drink, and clothing." "But," says Mr. Bankes to my client, "it is true that you took the bearings, but that is no merit of yours, for they were taken with *my* compass"! Let every man, Gentlemen, from henceforward, be careful how he writes with another man's pen, or sketches with another's pencil, because, according to the doctrine of Mr. Bankes, the property of a delineation is not in the delineator, but in the owner of the instrument by which it was delineated. If Lord Byron had, in a luckless hour, come across the path of Mr. Bankes, and borrowed from him the pen with which he had committed to paper the records of his immortal song, we should hear Mr. Bankes, claiming as his own, 'Childe Harolde,' 'The Corsair,' or 'The Bride of Abydos.' "It is true," Mr. Bankes would, no doubt say, "that Lord Byron *wrote* these poems; but then, he wrote them with *my* pen; and I therefore claim them as *my* property:" I have heard of the jealousy of women, of the jealousy of Turks, of the jealousy of hair-brained projectors, and of the proverbial jealous irritability of poets; but *their* jealousy is nothing—it is placid quiet compared with the jealousy of travellers. I will give you twenty women, ten Turks, five projectors, and five poets, and I will put against the jealousy of those numbers the jealousy of one single traveller, when the question is respecting ground on which *he* had once set his foot, or a plan of a city, or of a building, which *he* had at any time drawn.—*(Laughter.)* In this amiable trait of the character of a traveller, this libel will, I am satisfied, convince you that Mr. Bankes is not at all deficient: but the best of this is, that Mr. Buckingham not only did not *publish* Mr. Bankes's plan, but that he *never intended* to do it. When, as I have already told you, Mr. Buckingham paid a second visit to Jerash, he found that the bearings which had, under great inconveniences and disadvantages, been taken at the first visit, were so defective, that he was obliged to re-model the first plan entirely. There is, I am ready to admit, some similarity in the outlines of the two plans, as, of course, any number of representations of the same place, *must* have some general points of resemblance. But I shall call before you witnesses, who will prove that eight out of ten of the bearings of the second, are different from those of the first plan; and that objects and buildings altogether omitted in the first plan, were inserted in the second plan. All the defects of the first plan were rectified; and the only plan published by Mr. Buckingham corresponded exactly with his notes and bearings taken upon his second visit to Jerash, and ready to be produced in Court. Mr. Bankes assumes in this letter, that because Mr. Buckingham had traced Mr. Bankes's plan, without any objection on the part of Mr. Bankes, he had no right to publish it. I say, that if Mr. Buckingham had *wished* to publish the first plan, he had a perfect *right* to do so; because he had taken the bearings for Mr. Bankes, and therefore the plan was their joint property. It was the result of their joint labours: and that Mr. Bankes was at one time of the same opinion is quite clear, from the fact of his having permitted Mr. Buckingham to take a tracing of the plan, at the window of the Convent of Nazareth. Mr. Bankes must, at that time, have known for what purpose Mr. Buckingham wished to make a tracing of the plan. Why did he not then object to it? Because, I suppose, he did not then remember that the bearings were taken with "*my* compass;" and he thought, very justly, that Mr. Buckingham had a property in the plan. The libel then proceeds—

"Surely you must laugh at the simplicity of your subscribers when you are alone, with whom you are to pass for a draughtsman, being ignorant of the very first principles of design."

Mr. Buckingham does not pretend to be a finished draughtsman; he has published nothing which could lead the world to believe that he has any pretensions of the kind; but he does pretend to be able to draw well enough for common purposes. He can do what almost all travellers (who, I hope I may say, without offence, are not, in general, the best draughtsmen in the world,) do; he can bring back a sketch sufficiently intelligible to enable a man who has never travelled, to make a more perfect drawing, and to express that which he had never seen.

"For an accurate copier of inscriptions, being ignorant of all the ancient languages."

We have no means here of ascertaining Mr. Buckingham's knowledge of languages, as he cannot himself be examined in evidence; but even if it were so, that he is ignorant of the ancient languages, he is not *therefore* the less capable of copying ancient inscriptions. If he did not know a letter of the language in which the inscriptions were engraved, he would be on that very account the more likely to take a *fac simile* of them than the man who, understanding the language, would be naturally induced to ascertain its meaning in English. There is an old anecdote told of the celebrated printer, Elzevir, which is perfectly applicable: He used to employ women to correct the press, and he assigned as his reason, that they kept their eyes on the matter before them, and that, as they understood nothing about it their whole mind was occupied in taking care that there was no omission: but that when he employed Greek and Latin scholars to perform the same duty, they attended to the merits of the work, and did not attend to the matter before their eyes. I have always found that all travellers, even those who were well acquainted with the ancient languages, first took down *fac similes* of the inscriptions, and never thought of the task of decyphering until after they had accurately taken down the inscriptions themselves. That, therefore, being the practice of the best scholars, I cannot see how ignorance of ancient languages, supposing it even to be true, can be urged as a proof of a man's inability to copy inscriptions.

"And, for an explainer of antiquities (says Mr. Bankes), being incapable of even distinguishing between the architecture of the Turks and the Romans."

Certainly a man who knows not the difference between Saracen and Roman architecture must be most lamentably ignorant of that science; and he must be a most impudent pretender who, with his mind in such a state of ignorance, would affect for a moment to explain antiquities. If Mr. Buckingham's mind be in that state of ignorance respecting architecture, Mr. Bankes can prove it; but I shall show you that this is not the fact; and what witness do you think I shall call to prove my case? What witness shall I call to negative these imputations—to negative this piece of gratuitous malice with which Mr. Bankes closes his invectives? Not satisfied with having vented his indignation in charges of the blackest dye, against the moral character of my client; not satisfied with having violated the sanctuary of the tomb, to rake up against him the vile calumnies of one now no more,—he closes his invectives with a sarcasm and banter upon the ignorance of the plaintiff; and although, when he made the statement, he must have *known* the contrary to be the fact, he charges Mr. Buckingham with knowing less of science than the commonest mechanics even of that country; he accuses him of being ignorant to such an excess, that he does not know the difference between Turkish and Roman architecture! What witness shall I call to confute this slander? Gentlemen, I shall call Mr. Bankes himself; not as to what he might have said in conversation, which might be forgotten or misrepresented; but I shall produce to you a letter, written by Mr. Bankes himself, who, before he wrote this libellous letter, requested Mr. Buckingham to return him all the letters he had previously received from Mr. Bankes, on the plea that the observations made by Mr. Bankes in those letters might be of service

to him in completing an account of his travels. Mr. Buckingham immediately complied with this request; and Mr. Bankes then, no doubt, entertaining feelings of jealousy and hostility towards Mr. Buckingham, thought he might with perfect impunity retract every word that he had ever written to the credit of Mr. Buckingham. I venture to assert, Gentlemen, that if Mr. Bankes had, on the 12th of June 1819, the date of the libel, known that Mr. Buckingham was in possession of the letter from which I shall now read you an extract, he would in that letter have preserved a death-like silence respecting Mr. Buckingham's knowledge of architecture. The letter to which I allude was one that was missing at the time the others were returned; the whole of them having been placed in the upper part of a small leather portmanteau lined with cotton, in the usual manner; and the heat of the climate, then at its height, was so great, that the English wax which had been used in sealing this letter of Mr. Bankes's, melted, and the letter, with a shorter one enclosed in it, adhered to the lining of the portmanteau. The possession of such a letter by Mr. Buckingham was unknown to Mr. Bankes when he wrote the libel which is the subject of the present action; and it was equally unknown to Mr. Buckingham until it was accidentally, I may say *providentially*, discovered by him after his arrival in India, when it was preserved, and has been most fortunately retained for his vindication (2). This letter bears no very indirect testimony to

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(2) The history of the discovery of this letter, or rather letters (for there was a second enclosed in the first), is so remarkable, that it deserves to be given in detail. It is extracted from the Defence contained in the Calcutta Journal, of November 9, 1822, and will be found also in the Appendix to the 'Travels among the Arab Tribes,' at page 642. The following is the account of the event:—

"On my parting with Mr. Bankes at Aleppo, he for Palmyra (where, if I could only have forgotten Briggs and Co. for ten days, I might have gone with him, of which I have written evidence), and I with a dull caravan across the Euphrates into Mesopotamia, he gave me a kind and highly complimentary letter to his father's particular friend and Dorsetshire neighbour, Sir Evan Nepean, then governor of Bombay, which did me some service in saving me from a second banishment, as my licence to visit India did not reach me until after my arrival at Bombay. At that moment, as we were about to part for many years, and perhaps for ever, while we stood on the steps of Mr. Barker's dwelling, Mr. Bankes said to me, as nearly as I remember:—'I believe I have no notes whatever of my journeys, except the drawings I have made, and the letters that from time to time I have written to you. The first are numerous, and the last are I believe, longer letters than I ever wrote to any body before. As you are not in my case, but have very copious notes of your own, I hope you will give me my letters back again. Indeed, if I mistake not,' he added, 'I have hinted to you in some of them that I should, perhaps, wish them again for my own reference and assistance.' I did not hesitate a moment, but opened my baggage, all then packed (little as it was), got out my papers from the upper part of a small old English portmanteau, the part where loose clothes are generally stuffed, and returned him every letter of his that I could find. There was one only that he remembered to be missing, which was the longest of the whole, and one of those that he had particularly mentioned as desiring me to keep for his own use. We tumbled the baggage over and over again, but it was not to be found; we both regretted it; but, as I had promised to send him home, from Bombay, copies of some plans and descriptions of temples in Nubia, which I offered to *give* him to incorporate in a work that he intended writing on that country, and to add gratuitously to the stock of *his* materials, I promised that when I sent these home to him I would also send, if I ever found it, a copy of his letter, or the original.

"We parted with mutual expressions of regret, prayers for our safety, promise of future correspondence, &c., in all of which Mr. Barker and his family sympathised and joined, and I at length reached Bombay.

"Soon after my arrival there, when intending to get rid of my old and worn-out travelling packages, I gave, among other things, the little leather portmanteau to my servant, to sell for himself, or make any use of he thought proper; and as servants sometimes look sharper into holes and corners than their masters, mine brought me back the portmanteau the next day, to show me that two letters had stuck fast in the very inner part of the covering, from whence they were detached, having closely adhered to the cotton ticking cloth, by the heat melting the English wax, and one letter being within the other. I was both surprised and pleased to find

Mr. Buckingham's competency to decide a question of architectural doubt.—This, Gentlemen, is an extract from it:

"By the bye, FROM THE DESCRIPTION IN YOUR NOTES of the fortress of Adjeloon, I am *almost persuaded* that that also is Saracen work. Bostra, you will remember, has the rustic masonry all over it; and instances of the fan or shell niches are without number, though I know you are of a different opinion, AND I WILL NOT VENTURE TO SET MINE AGAINST IT."

Adjeloon is situated about twenty miles distant from Jerash, and the fact of Mr. Bankes having perused the notes taken by the plaintiff at Adjeloon, is, in my mind, Gentlemen, a most convincing proof that he must have read the notes taken by the plaintiff, on his second visit to Jerash, because they are not only all in the same book, but those on Adjeloon, to which he expressly refers, begin on the back of the very page on which the notes on the second visit to Jerash are concluded.

"Though I know you are of a different opinion, and I will not set mine against it"!

Now, Gentlemen, if the plaintiff be so ignorant as he is represented in this libel to be,—if he be so ignorant as not to know the difference between Roman and Turkish architecture, Mr. Bankes would not have cared a straw about his opinion. What!—can you believe, for an instant, after having heard the passage, "and I will not *venture* to set *mine* against it," that Mr. Bankes did not feel satisfied that Mr. Buckingham was *well acquainted* with the architecture of the ancients? Can you believe, then, that when Mr. Bankes penned the sentence imputing such gross ignorance to Mr. Buckingham, he did not feel convinced that he was giving vent to his spleen, and exercising his wit regardless of the fact? The letter goes on,

"I have been very careful and exact in my drawings, which are in great number; and——"

Here comes, Gentlemen, another general compliment to Mr. Buckingham's abilities, and another proof that his ignorance is not so excessive as Mr. Bankes has stated it to be in his letter of the 12th of June 1819:

"I DO NOT THINK YOU WILL BE ASHAMED OF HAVING YOUR NAME ASSOCIATED TO WHAT I MAY ONE DAY OR ANOTHER THROW TOGETHER INTO FORM."

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these to be letters of Mr. Bankes, and one particularly, the long one that was remarked to be missing, and for which we had made such diligent search at Aleppo in vain; I never dreamt, however, that they would prove of such essential service to me, and therefore attached no importance to this event at the time, though at this moment I regard it with mingled feelings of wonder and gratitude.

"It was after Sheikh Ibrahim's 'paper' on me reached Bombay, that I sent home to Mr. Bankes, as I had promised him, my manuscript plans and notes on Nubia, addressed to him in Palace Yard; but as I thought his letter too valuable to be risked (on account of its interesting contents only), I sent a copy, which I knew would answer Mr. Bankes's purpose, and kept the original, which is now in my possession, and which I shall preserve to the day of my death, if possible, as a memento of how much I owe to this providential preservation of a sheet of paper.

"As Mr. Bankes continued out of England, I believe from the time I left him till he wrote me his letter from Thebes, my Indian letters could not have reached him, so that he had no reason to believe that I had preserved a single scrap of paper in my possession that bore his name. It may seem unwarrantable in me to say it, but I nevertheless firmly believe, that at the moment of Mr. Bankes writing me his insulting, and to him disgraceful letter, he was fully convinced that I had not a single tittle of evidence beyond my bare assertion with which to oppose his statement. With him it was a seemingly safe game to play. There were, at least, a hundred chances to one that he should win, and he embarked his all (for reputation must be that to every man who would maintain the rank and character of a gentleman in England), but justice held the balance, and his hundred chances were but as a feather against the one that fortunately weighed them all down.

"But it is time that the letters should be given. They are the only ones, except two or three very short notes, that I retain, out of more than twenty that I received from him at various times and places, many of which might have contained more marked proofs than even these on many points of dispute; but, thank heaven! these are quite enough." *

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* The first of these is the letter just quoted by Mr. Brougham, in his speech. The second, of which extracts only are quoted above, is given entire in a future page.

Here, then, Gentlemen, is Mr. Bankes, whose purpose it now suits to represent Mr. Buckingham as the most ignorant of impudent pretenders, sitting down (after recent observations, after having had recent intercourse with Mr. Buckingham, his fellow-traveller and joint observer,) and writing, under the impression of recent knowledge, that he is actually contemplating a plan for *associating the name of Mr. Buckingham with his own*, in a work which he then intended to lay before the public. The libel proceeds:

"I have said enough. It is in vain to attempt to make a man sensible *to* ingratitude who has been guilty of fraud."

Gentlemen, it is rather difficult to find out what Mr. Bankes (considering that he is a learned man) means, by making a man sensible *to* ingratitude. I wish, indeed, that the man who thinks fit to twit and chide others for not having learned the ancient languages, would, when he writes in English, condescend to express himself in the old, every-day language, now fast going out of fashion with some folks, the plain vernacular tongue, which Englishmen talk and understand, and not leave us to guess his meaning. Perfectly inaccurate and unintelligible (in a grammatical point of view) as are the words "sensible *to* ingratitude," it is easy to discover what Mr Bankes means by those words. He means (most unfairly) that Mr. Buckingham has added ingratitude to fraud; and when he says, that it is "in vain to attempt to make a man sensible *to* ingratitude," he means to say, it is impossible to make a man sensible of the guilt of ingratitude who has been guilty of fraud. Gentlemen, I beg you to bear in mind Mr. Bankes's own statement. He says, "I drew the plan; I paid the expenses of the journey, and you took notes for me." Well! there is blood for blood. According to Mr. Bankes's own account, there is no balance. His statement is, "I satisfied you for what you did for me." I deny, Gentlemen, that such was the fact; but I merely state it to you, in order to show that, according to Mr. Bankes's own account, the charge of ingratitude, or as Mr. Bankes is pleased to express it, the charge of being "sensible to ingratitude," cannot be maintained. When Mr. Bankes asserts that Mr. Buckingham has surreptitiously made use of his drawings, he is perfectly intelligible; but I trust that I shall satisfy you that no such thing has happened. Perhaps Mr. Bankes means to say that Mr. Buckingham has availed himself of some literary and erudite communications made by him during their intercourse in the East. If that be his meaning, then I say Mr. Buckingham has a set-off against those communications; for Mr. Buckingham, whether he be well versed in *ancient* languages or not, was as capable of *observing* as Mr. Bankes. He had been familiar with the manners and customs of the East, and well acquainted with those *modern* languages, of which Mr. Bankes knew *nothing*. This knowledge, on the part of Mr. Buckingham, and the information derived by means of such knowledge, and freely communicated to Mr. Bankes, will, if set off against Mr. Bankes's literary communications, square the account between the parties, and put an end to obligation on either side. But, supposing for a moment that there is a balance in favour of Mr. Bankes, and that he has contributed more in the shape of information than Mr. Buckingham has, of what use to Mr. Buckingham could the improvement derived from Mr. Bankes's information be, if he were not permitted to use it in the work which he has laid before the public? What great obligation could a man confer upon another by communicating useful information to him, and telling him at the same time, "You must not treasure this up for the improvement of your mind, or for the advancement of your interests." I have not to learn, Gentlemen, of what value would be the hospitality of the man who should say to his friend, "I have invited you to my table; I have heaped the board with the most exquisite viands; I have been lavish in my expenditure to convince you of the heartiness of my invitation, but you are so insensible *to* ingratitude,' you are such a paragon of thanklessness, that you are actually proceeding to *consume* the meat and drink which I have set before you!" That, Gentlemen, is the amount of Mr. Bankes's charge, where he says that my client has improved his mind, and stored his journal with information communicated to him by Mr. Bankes. But I say, Gentlemen, that if my learned friend, Mr. Gurney, shall produce Mr. Bankes's notes and

manuscripts, you will find, upon a comparison between them and Mr. Buckingham's published work, that they have *not* been transferred, either in form or in substance, to Mr. Buckingham's book. This, then, being the case, there is no ground for the very worst part of the libel,—there is not, in the published work of Mr. Buckingham, a tittle, which any man of common fairness or common candour can say, would justify the accusation thus preferred by Mr. Bankes against his friend. The libel concludes in the following words:

"What I demand is, the immediate restitution of those copies from my papers, without exception, and without your retaining any duplicate of them. Let them be put into the hands of Sir Evan Nepean, whom I have begged that he will do me the favour to take charge of them (3); and let all that portion of the work advertised that treats of a journey made at my expense, and compiled from my notes, be suppressed. I leave you otherwise to take the consequences. Should you persist, the matter shall be notified in a manner that shall make your

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(3) Mr. Bankes was not content with merely sending Mr. Buckingham the libellous letter in question, and waiting for his explanation of the points in dispute, or for his giving up the materials pretended to have been copied from his writings or plans,—on which condition he offers to forbear from all further proceedings. Without waiting to see the issue of his application, he, on the same day (June 12, 1819), writes home to his father in London, enclosing him a copy of this libellous letter, or one exactly the same in substance, giving him authority to publish it over all England, if he chose; he sends another copy, through Mr. Hobhouse, to India, giving him authority to show it to any one he thinks proper, in his progress through the greater part of Asia; and he writes, at the same time, a letter to Sir Evan Nepean, then governor of Bombay, of a nature calculated to do Mr. Buckingham the most serious injury: so that, even if the latter *had* complied with his demand, on condition of which, it seems, he was to be considered as having expiated his *intended* offence, the measures taken to destroy Mr. Buckingham's reputation were as effectual as if they had been founded on the actual certainty of his obstinate persistence in guilt. In corroboration of this assertion (as it tends greatly to aggravate the crime of Mr. Bankes), it is necessary to adduce some proof: and, on this account, the introduction here will readily be forgiven, of a letter written to Mr. Buckingham when at Calcutta, by a gentleman of the highest character, at Bombay, communicating this fact. The letter was, no doubt, not intended for publication; but, as its appearance is to serve the great ends of justice, it is believed that the writer himself will rejoice at its being made use of for such a purpose. It is as follows:—

"To J. S. Buckingham, Esq., Calcutta.

"*Bombay, 5th June*, 1820.

"My Dear Sir,—I write you at present rather hurriedly, being on the point of setting out for Poona. I am chiefly induced to do it at this moment, to mention to you what probably you already know,—Mr. Bankes's consternation and rage at seeing the prospectus of your Travels. He wrote to Sir Evan to discourage the work, to withdraw his name, &c.; the letter was opened by Mr. Elphinstone, who showed it to me, as your friend: I said you would, I was sure, be read to publish the letter in your paper, to give it all the publicity Mr. Bankes could desire. Mr. Bankes seems to have written you himself, I suppose in a style of resentment. He suspects you of pilfering from his manuscript journal, of copying his plans, especially of Jerash, of not mentioning his name, though you travelled with him at his expense, and the plan was laid down *with his measure*. He desires a copy to be sent to Lord Hastings, and beseeches Sir Evan, in his own and in his father's name, to discountenance you. Mr. Elphinstone had thoughts of sending the letter to the Marquis, sending you a copy of it at the same time, that you might not be taken by surprise. I told Mr. E. you were the last person in the world to deny such pecuniary obligations as you might lie under to Mr. Bankes; that you had uniformly talked with praise of Mr. Bankes's learning and enterprise, and with envy of his talent for drawing; that, as to plans, you were as well qualified as he to take them, and that you did not pretend to do more than sketch. Mr. Hobhouse, a brother of the Westminster Hobhouse, arrived here a few days ago from Egypt, having met Mr. Bankes at Trieste, highly indignant with you. I told him that Bankes was run away with a needless alarm; that you were as ready as any man to grant his merits, &c. &c.; and, on seeing him a day or two after at the Library Society's rooms, where he had been running over the pages of your Journal, he confessed that he thought Bankes had been precipitate, and was high in praise of your ability. He has left this in the Syren, for Calcutta. Find him out: he has been over France, Germany, Italy, the Ionian Isles, Syria, and Egypt, on his way out, and can give you the latest news of them all, as well as of England. He is a very intelligent, active-minded man; I believe he was connected with Palmer's house; I thought it as well you should know what Bankes was about, that you may not be taken by surprise, even should his letter not reach you.

"I was happy to receive the small sum between us, as it afforded a proof of your prosperity. Long may it continue and increase!

"Yours sincerely, "Wm. Erskine."

character as notorious in England and in India as it is already in Egypt and Syria (3½). You will find that you have not duped an *obscure individual*, who is obliged to bear it, and to hold his tongue.

" Wm. J. Bankes.

" When this letter was written, I did not know that the person to whom it was addressed was the editor of the paper in which his *longwinded* (4) advertisement appeared; but supposed him to be still at Bombay."(4½)

Gentlemen, there is, undoubtedly, in this letter, much that is trifling, not a little that is childish, and a great deal that is ridiculous; but there is also much that is seriously contrived to work great mischief and to give acute pain. The letter, Gentlemen, was entrusted to one a stranger to Mr. Buckingham. It was read by that stranger, and, it was accompanied with instructions to show it to others—as well those who knew Mr. Bankes, as those who did not—men to whom Mr. Bankes was unknown, but to whom his name, his station, his connections, and his rank in society were not unknown. It was to be seen also by men to whom Mr. Buckingham was known, and by men to whom he was unknown. And when you reflect on the base nature of men, ever inclined, at the present, to believe the evil they are daily hearing, rather than the good they recollect,—setting the tales of others against their own experience, to gratify curiosity or malice,—you will feel the risk there was of even those who had once well known Mr. Buckingham being prone to receive the calumny thus disseminated by a wealthy and powerful libeller, while they who knew him but little were sure to swallow it whole.—To this attack Mr. Bankes brought no inconsiderable resources—a little experience—a well-known name—some ability—respectable connections—unques-

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(3½) Whatever notoriety Mr. Buckingham's character might have acquired in Egypt or Syria, was *after* he quitted those countries, and was wholly owing to the industrious propagation of unfounded calumnies by Mr. Burckhardt and Mr. Bankes—themselves the authors as well as propagators of the slanders now so successfully refuted. The notoriety, if any, was therefore their own work; and it is not a little remarkable, that they should urge against another as a crime, that of which they themselves had been the sole creators. As to giving Mr. Buckingham's character notoriety in England, Mr. Bankes did not wait to see whether he persisted in his course or not, before he attempted to stain his reputation in Europe, as well as in Asia, as may be shown by the pains taken to spread, through his own father, all the libellous matter written by himself. But when Mr. Buckingham's Travels in Palestine actually came out in England, without a scrap of Mr. Bankes's pretended materials having been given up to him, and yet without any portion of the book being found capable of being recognised as his, his rage was ungovernable; and he then wrote the disgraceful article in the Quarterly Review, which is now known, on Mr. Murray's own authority, to have been written by Mr. Bankes himself, and which Murray subsequently acknowledged, in open court, to be full of false and unfounded calumnies, humbly apologising for its insertion, as well as consenting to abandon all justification, and to pay damages and costs, of which, it is said, Mr. Bankes, the author of the article, who had got him into this difficulty, refused to repay any portion!!

(4) This elegant expression is such as would hardly be expected from one who was accusing another of deficiency in classical attainments; but, like the phrase " sensible *to* ingratitude," it may be pardoned, perhaps, on the score of more *solid* learning having entirely engrossed the attention of the erudite and profound antiquarian.

(4½) It may be as well to state, that the individual to whom this letter was addressed being in Calcutta, and the writer in some part of Europe, no immediate proceedings, legal or otherwise, could be entered into, except the refutation which it was fortunately in the plaintiff's power to give at once to the calumnies it contained. The following reply was all that was thought necessary to be sent the author of these calumnies. The refutation followed, and the result has been seen:

" To W. J. Bankes, Esq.

" *Calcutta, June* 22, 1820.

" Sir,—I received your insulting and infamous letter, dated Thebes, June, 1819, only a few days since, as well as its copy sent here by the hands of Mr. Hobhouse.

" I shall enter into no further remarks here on the subject, than to state that it contains a tissue of most abominable falsehoods; that I regard you, therefore, as having forfeited the character of a gentleman; and that I shall use the means which your own previous letters to me in Syria (fortunately preserved) furnish, of proving to the world the baseness of your conduct.

" J. S. Buckingham."

tionable wealth—launched with the force thus given it, the slander was certain of flying far; but it was contrived so as to sink deep and wound sorely. You see how it was designed to rankle by the epigram and point attempted to be given it. No fault of Mr. Bankes that he wrote not like Junius. He has all his gall if not his nerve—the venom is as foul, if the tooth be not so sharp. Not satisfied with the stroke as he at first dealt it, he must needs repeat it with a most deliberate spite; when brought before this tribunal, he has affirmed the truth of all his charges. We pronounce them false, and dare him to the proof. Mr. Buckingham knows that his accuser must be confounded. He feels well assured of his perfect triumph this day—he looks with unbroken spirit on his own situation, when he contrasts it with that of his former friend, with unfaultering hope to the vindication which awaits him this day when you are his judges. Yet suffer me to add, that after the stain which has so long been suffered to rest upon his fame---after the length of anxiety and vexation which he has endured in an unequal conflict with adversaries so powerful, the amplest reparation you can bestow will afford him but an imperfect solace for what he has borne; his final victory will never prevent him from noting with the blackest mark the day that made him known to the defendant—and, to the last hour of his life, he will look back upon his intercourse with Mr. Bankes, not as we lament our ancient loves and long lost friendships, but among the very worst of the bad perils that beset the path of the wayfaring man.

## EVIDENCE FOR THE PLAINTIFF.

*Henry William Hobhouse, Esquire, examined by Mr. Hill.*

Mr. Hill.—What is your Christian name, Mr. Hobhouse?—Henry William.

Were you in the Civil Service of the East India Company?—Yes (4¾).

You have refused to see the solicitor for the plaintiff, to take down your evidence in this cause?—Yes.

Excuse me for having asked you the question, but it was necessary that I should do so (5). Take this letter in your hand, Sir, (presenting to him the

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(4¾) And now (having retired on a fortune) a candidate for the situation of a Director of the East India Company.

(5) It is but justice to Mr. Hobhouse that the facts of the case should be clearly explained, in order that no false impression may be created by this imperfect allusion to a perfectly well known fact. On Mr. Hobhouse's reaching England, it was communicated to him, by the plaintiff's solicitors, Messrs. Vizard and Leman, that in the action pending between their client and the defendant, every thing depended on the fact of whether he, Mr. Hobhouse, did really receive the libellous letter from Mr. Bankes open, and with instructions to show it to other persons or not. By Mr. Bankes's pleading, on the record, that he was *not* guilty of the publication alleged, or, in other words, that he did *not* give it to Mr. Hobhouse in the manner and for the purposes described, the plaintiff had been for months unable to proceed to trial, and had at length, after much difficulty and expense, been compelled to send a commission to India, for no other purpose than to obtain Mr. Hobhouse's evidence to this simple fact. He was requested, therefore, by the solicitors, to say, whether this was really the case or not. If Mr. Bankes's plea, that he was *not* guilty of the publication, could be substantiated, it would be useless for Mr. Buckingham to proceed, as the very first step in his case was to prove this. If, on the other hand, the letter really *was* published as described, it was desirable to know this, before proceeding any further, as on the above must depend the possibility of going on with the case. Mr. Hobhouse was further assured, from many quarters, that there was nothing unusual in a solicitor's being made acquainted, before the trial, with the evidence which his client's witnesses could produce: but that, on the contrary, this course was uniformly pursued, as it must, in every case, depend on the knowledge of what evidence can, or what cannot be produced, whether a cause can be undertaken or proceeded in with any hope of success. These representations, however, appear to have made no impression on Mr. Hobhouse. He would neither see the solicitors, nor communicate to them what he knew of the matter, *pro* or *con*. They were not even able to serve him personally with a subpœna in London, though one was sent by letter, of which no notice was taken; and it was not until Mr. Hobhouse went to Cheltenham, that the agent of the London solicitors, at that place, were enabled to serve Mr. Hobhouse personally with the subpœna, requiring him to attend.

libellous letter of Mr. Bankes); did you receive that letter from any person, and from whom?—Yes, I think I did receive this letter; I think so because there is some of my handwriting on it.

Have you any doubt about it?—No, I have not.

From whom did you receive it?—From Mr. William John Bankes.

At what time and place did you receive it?—I cannot say the time exactly; it was the end of the year 1819; but the place was Trieste.

In what state did you receive it?—In this state, (showing the letter open).

Unsealed?—Yes.

Did you read it at the time in the presence of the defendant?—I read it, but I do not think he was present. He sent me the letter; it came to my hand in that way, (showing it open).

Did you ever have any conversation with Mr. Bankes about that letter before or after you received it?—I had.

Describe it.—Oh! I can't.

I don't mean the exact words; but the nature of it. Was the conversation about the letter?—Yes, it was, partly.

Give the nature and object of it?—I have no recollection exactly about it; but I should think, that as well as I remember, the nature and object was, that he had seen Mr. Buckingham in Syria; that Mr. Buckingham was going to publish some book, which he (Mr. Bankes) thought unfair with reference to himself; inasmuch as Mr. Buckingham had fallen in with him in Syria, and

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The facts are, however, detailed in the professional letters of the parties employed in the cause, and these are therefore subjoined:—

"To J. S. Buckingham, Esq.

"*Lincoln's-Inn Fields, August* 19, 1826.

"Dear Sir,—Mr. Hobhouse successfully avoided our various attempts to serve him with a subpœna in your cause against Mr. Bankes, while he remained in London; we, however, enclosed him a subpœna in a letter, but as that was not good service, we thought it right to have him served by a solicitor at Cheltenham, where he then was, and on the other side we send you a copy of that gentleman's letter in reply.

"We are, dear Sir, very faithfully yours, "Vizard and Co."

(Copy).—"To Messrs. Vizard and Co.

"Dear Sir,—I served a copy of the subpœna sent by you on Mr. Hobhouse this morning, who told me he did not think he should be able to attend at the trial. I offered him a guinea, and to let him have any money he wanted for his expenses, both of which he refused; he took the copy, and said he had been served with one in London, and, as he supposed the plaintiff would not like to pay him £100,000 for attending, he did not think he should attend, as he should be out of the country.* I am, Sir, your most obedient servant,

"*Cheltenham, August* 18, 1826. "Edward J. Prudn."

The day of trial approaching, and Mr. Hobhouse being found to have left Cheltenham, without any intimation of his change of residence, or any notice left at his last place of abode where he was going, or where he was to be found, the most serious apprehensions began to be entertained for his appearance; and, accordingly, the plaintiff himself, having accidentally found out that he was gone to Brighton with a view of embarking for France, but that a letter at the post-office there would find him for a few days to come, hastened off to Brighton, with an introduction to a legal gentleman there, Mr. Skene, for the purpose of finding him out and repeating the service of the subpœna personally, to insure his attendance. Nearly two days, however, were spent in fruitless search over all Brighton, for the person of Mr. Hobhouse. A messenger came for his letters to the post-office, but no address was left there for their guidance. Not a single inn, or boarding-house, or library, contained his name on their lists; the master of the ceremonies, who is generally acquainted with the arrival and departure of every individual visiting the place, knew nothing of the name; and, on the evening of the second day's fruitless search, the plaintiff was about to return to London in despair, with a conviction, that, if Mr. Hobhouse should not attend to *prove* the publication, the defendant would not *admit* it, and that a nonsuit would be certain, which would burthen him with the whole of the ex-

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* Some persons have suggested, as the only intelligible interpretation of this expression about the £100,000, that Mr. Hobhouse must have thought his appearing to do justice to Mr. Buckingham might lose him his seat in the East India Direction, which, supposing its patronage to be equal, as is estimated, to £20,000 per annum, would be just worth £100,000 at five years' purchase.

had attached himself to him, and that he considered it excessively unfair towards him; I mean Mr. Buckingham's work.

What about the letter?—He said that he wrote a letter to Mr. Buckingham from Thebes, and that he would send me a copy of it; he then sent me this, (showing the letter).

Did he make any request, as to what was to be done with the letter?—I have got the letter which he sent me with it.

That is what we want. Is that letter in his handwriting?—I see no secret about it.

Mr. HILL.—No secrets here, certainly.

Mr. HOBHOUSE.—Do you want the letter? (producing it).

Mr. HILL.—Yes. Before you received that letter had you any communication with Mr. Bankes as to what was to be done with Mr. Buckingham?

LORD CHIEF JUSTICE.—Do you wish to read the letter which accompanied what you call the libel.

Mr. HILL.—Yes, my Lord.

LORD CHIEF JUSTICE.—Then let that be read before you go any farther.

[The Honourable Mr. Abbott, Junior, then read the following letter:]

"TO HENRY WILLIAM HOBHOUSE, ESQ.

"*November* 16, 1810.

"DEAR SIR,—I have found, this morning, the rough draft of the letter which I wrote to Buckingham, on the first sight of his advertisement in the Calcutta Journal; I send it to you enclosed. There may be some verbal variations, since I kept no duplicate of it, but it is essentially the same throughout. A motto, which I have prefixed to the copy, will explain to you my reasons for putting it into your hands (6). I wish you to show it to Mr. Barker at Aleppo, and to Mr. and Mrs. Rich, at Bagdad. You may make what use you think proper of it, when you go to India; but if you find the work is withdrawn, it will be better perhaps to be merciful.

"Yours, &c. J. W. BANKES."

*Examination of Mr. Hobhouse, by Mr. Hill, resumed.*

At that time were you going to Aleppo?—I intended it, but I did not go to Aleppo.

Did you show it to any person in Bagdad?—No, I did not go there.

What did you do with it in India?—I don't recollect any thing else about it, but giving it to Mr. Palmer in India (7).

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pense of the proceedings, little short of £3000. Fortunately, though at the last hour, the discovery so much wished for was made; and Mr. Skene succeeded in personally serving the witness with the subpœna required. Even then, however, Mr. Hobhouse would not pledge himself to attend; but, on the contrary, stated that he should not do so, unless he were obliged. In consequence of this communication, a letter was addressed to him by Mr. Buckingham, pointing out the liability of any witness refusing to attend a subpœna not merely to an attachment for contempt of court, but also to an action for whatever damages might result from the absence of his testimony; and adding, that besides the serious consequences to the plaintiff if a nonsuit should ensue, it was necessary, for Mr. Hobhouse's *own* sake, that he should appear, to prove he had Mr. Bankes's *authority* for publishing the letter, as Mr. Bankes's plea was, that he was *not* guilty of publishing it; the only inference to be drawn from which was, that, as its publication was undeniable, it must have been an *unauthorized* publication, which of itself insinuated or implied a direct breach of trust. This representation obtained from Mr. Hobhouse an admission, that *if*, upon inquiry, the facts and consequences were found to be as stated in the letter referred to, he would certainly contrive to be in court at the trial. The result would seem to be, that such inquiry proved the accuracy of the statement, since Mr. Hobhouse came into court, and gave his evidence accordingly, which, of course, was all that was required of him.

(6) When this letter was delivered up by Mr. Hobhouse to Mr. Palmer, this motto was so effectually obliterated by being crossed over with ink, that it was impossible to make out one perfect word of the whole. It appeared, from the terminations of the lines, to be an extract from the poems of Metastatio; but, in the opinion of Mr. Hobhouse, it was so improper or so inappropriate, that he erased it entirely, and wrote underneath it, in his own hand, the following words, "I desire this motto not to be noticed—Henry William Hobhouse."

(7) A gentleman, who was in court on the day of trial, stated, and was ready to give evidence of the fact, but it was then thought unnecessary, that he was himself at Patras, in the

You showed that copy to Mr. John Palmer of Calcutta?—Yes.

Did you show it to any body else?—I think I did, at Bombay.

What is the name of the person at Bombay to whom you showed it?—If to any body, it was to Mr. Erskine (8).

What situation does he hold?—I don't know.

Was he not an officer of the Supreme Court?—Yes, I believe he was.

Was he not Sir James Mackintosh's son-in-law?—Yes, he was.

You were to have shown it to Mr. and Mrs. Rich also?—I don't know them.

You showed the letter to Mr. John Palmer. Did you leave it with him then, or did you show it to others?—I did not show it to any other persons there, to my recollection; but I did not leave it with him immediately.

Eventually, what did you do with it?—I gave it to him.

Had you any conversation with him as to the contents of the letter?

Mr. GURNEY.—I object to any evidence respecting such conversation (9).

Mr. HILL.—But the witness got the letter with instructions to make what use he pleased of it.

LORD CHIEF JUSTICE.—He showed the letter to Mr. Palmer, but what he then said to Mr. Palmer is not very material.

*Mr. Hobhouse cross-examined by Mr. Gurney.*

My Learned Friend has asked you whether you did not refuse to see the attorney for the plaintiff; did you not refuse to see the attorney for the defendant also?—Yes, I did. I wished to have nothing to do with the business (10).

By Mr. BROUGHAM.—You have never communicated to the plaintiff's attorney the letter which you have this day produced?—No, not the letter (11).

The libel (the whole of which, with the exception of the following extracts, was read by Mr. Brougham in the course of his address to the jury) was then put in and read.

"It is hardly necessary to remind you, that you neither copied a single inscription, nor made a single sketch on the spot: since you are, I know, incapable of the one, and your ignorance of Latin and Greek must, I should suppose, unfit you for the other: add to which, you had not a single sheet of paper on which you could have done either, if I except a pocket-book, about four inches square."

"The great ground plan was traced at a window of the convent, at Nazareth (as both my servants can testify), and you have copies from my drawings of the tombs of Oom-Kais, taken at the same time: these last are probably to furnish the vignettes and appropriate engravings which are announced."

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Morea, soon after Mr. Hobhouse passed through that place on his way to Egypt: and heard from Mr. Green, the British Consul there, that Mr. Hobhouse had shown him Mr. Bankes's letter; and that it formed a topic of conversation at that place.

(8) It will be seen by Mr. Erskine's letter, already given, what took place at Bombay, at the time of Mr. Hobhouse's arrival there.

(9) The reader is requested to mark especially the eagerness of Mr. Gurney to reject the evidence of Mr. Hobhouse's conversation with Mr. Bankes, when it is likely to make against his client; although (as will be afterwards seen) he is as eager to press the evidence of Captains Irby and Mangles's conversation with Mr. Bankes, when it is expected, by him, that it will make against the character of his opponent. This is the "fairness" of some gentlemen of the law.

(10) The wish was very natural; but the question arises, whether, after *having already had* so important a share in the business, as to have been the instrument through which certain slanders were propagated to the world, it was not rather too soon to cease to have any thing more to do with the business, before equal pains had been taken to remove the injurious impression created by those slanders, by assisting the calumniated individual to obtain justice from his accusers.

(11) Mr. Hobhouse subsquently admitted, in an open conversation that passed between him and the counsel on both sides, from below the bar, after quitting the witness-box, that he had, the day before, communicated to the defendant's attorneys, the fact of his having such a note or letter, though he had not made this communication to the attorneys for the plaintiff.

Lord Chief Justice.—Mr. Brougham, there is in the introductory part of the declaration something said about the advertisement. The best thing you can do now, is to prove that advertisement.

Mr. Brougham.—Does not your Lordship think the libel proves that?

Lord Chief Justice.—The letter of the 12th of June speaks of an advertisement in the 'Calcutta Journal;' but I think you had better prove it.

Mr. Brougham.—It is in the officer's hand, my Lord. It is the paper marked 'C.' It is admitted on both sides to be the advertisement referred to in the libel.

Lord Chief Justice.—Then you have nothing to do but to put it in.

The advertisement which appeared in the 'Calcutta Journal,' of the 2d day of October 1818, was then put in.

Mr. Brougham.—I have no wish to have it read.

Lord Chief Justice.—There is certainly no occasion to have it all read. The title of the work will be sufficient.

The title, 'Travels in Palestine in the year 1816, by J. S. Buckingham,' was then read.

Mr. Gurney.—I wish to have other parts of the advertisement read.

Lord Chief Justice.—Either of you, Gentlemen, has a right to have the whole of it read, if you wish it.

Mr. Brougham.—In order to save time, my Lord, I consent that my learned friend, Mr. Gurney, shall take any part he pleases as if read.

Lord Chief Justice.—If both sides are agreed to that, I am satisfied. (The advertisement was here handed up to his Lordship.) When I wished the advertisement should be read, I did not think it extended to four columns. (*Laughter.*) (12).

The friendly letter of Mr. Bankes, written to Mr. Buckingham at Damascus, dated "Acre, 8th February 1816," which was read by Mr. Brougham in the course of his speech, was put in and read.

*John Murray examined by Mr. Pattison.*

Mr. Murray; you are a publisher in London?—Yes.

Did you ever see the manuscript now before you?—I cannot exactly say that I recognise it as the same; but I saw one which I believe to be this.

When did you first see it?—About five or six years ago.

Can't you fix the time more particularly?—No, I cannot. (12½)

Do you recollect to whom you had given it?—I believe it was given by one of my clerks to Dr. Babington.

How long was it in your possession before you gave it to Dr. Babington?—I cannot say the precise time.

Can't you say whether it was months or years?—Months, certainly; but I cannot say how many.

*Cross-examined by Mr. Gurney.*

At the time you sent the work back, had you seen this letter? (The letter produced by Mr. Hobhouse.)—No, sir; I never knew of that in any way.

Did Mr. Buckingham submit to you any original drawings for the work?—He sent me two or three portfolios of drawings and engravings.

How many drawings were there?—I do not know; there may have been five or six. (13)

The rest were all engravings?—Yes; old engravings.

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(12) This was not what would be generally understood by the term "Advertisement." It was a "Prospectus of the Travels in Palestine," and so called; being almost an exact copy of the preface to the work itself, giving an outline of the whole journey performed, and, therefore, necessarily extending to some length.

(12½) Although he had been especially requested by the plaintiff's solicitor long before the trial came on, to ascertain it from his books, and to be exact on this point.

(13) The counsel for the plaintiff believed that the intention of introducing these drawings was to prove them to be Mr. Bankes's, and to show that Mr. Buckingham had copied them. This not being even attempted, any observation on it was unnecessary, as this matter was wholly foreign to any thing contained in the libellous letter now under trial.

Were there any old French engravings among them?—There were.

Are those produced (handing some to the witness) some of them?—I should say these were some of them (13½).

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(13½) There were *no* old French engravings among the whole. The engravings here spoken of were not only *new*, but *unpublished*,—nay, even *unfinished*: and as much unknown to the English public, as any original drawings whatever. Their history is sufficiently curious, to be given in detail. The French artist, Casas, had, in the course of several years' labour, amassed in his portfolio a magnificent collection of drawings, including almost every thing of beauty or importance in Syria and Palestine. On his return to France, these were so much admired, that it was determined to engrave them; and for this purpose, it is understood, the patronage of the Emperor Napoleon (which was always readily granted to works of art connected with the East), was extended to them. They must have been many years in progress, from their great number. But it happened, that at the period when the great political changes took place in France, the work was not finished; and its original support being withdrawn from it, it was not likely ever to be completed. When Mr. Rich, the East India Company's resident at Bagdad, was in Paris, about the year 1814, he obtained a copy of such of the prints as were then engraved, and brought them with him to Bagdad, where Mr. Buckingham first saw them, in the year 1816. These were so unfinished, that they had not even a line below each plate to indicate the place represented, nor was there a line of letter-press accompanying them; though they were intended to have been amply illustrated and described, if the work had been brought to a close. In this state, they alone were able to recognise the places who had actually seen them. Many of them were unknown even to Mr. Rich himself, and would have been so to any one else, not personally acquainted with the localities delineated. As Mr. Rich was one of those friends, who, on reading Mr. Buckingham's notes, had urged him to publish them, he suggested the great ornament it would be to any new work on Palestine, to introduce a few of the best of these views of Casas into it; and thought it would be, not only a gratification to the world, to whom these productions were, in their present state, either useless or unknown, but also of service to the reputation and memory of the artist himself, to whom they would do infinite honour. Mr. Rich even offered those prints of his for the purpose; and Mr. Buckingham took them from Bagdad to India with him accordingly. On his MSS. being placed in the hands of the late Bishop Middleton, of Calcutta, those engravings were shown to him, and he concurred entirely with Mr. Rich, in thinking that, with proper acknowledgment, the introduction of a few of them into the work would improve it, gratify the reader, and spread the fame of the artist thus introduced to their knowledge. It was accordingly determined that this should be done: a few were selected for this purpose; and as the figures of men and animals on them were very numerous, and would add greatly to the expense of the re-engraving, though no *necessary* part of the views themselves, it was thought advisable to omit by far the greater portion of these; to alter some that were inaccurate in costume; and to place smaller groupes, sufficient to give the scene some appearance of life, without, however, altering a stone, a shrub, or a pillar in the whole. This was done: certain memoranda to this effect were written in pencil on the foot of each plate, describing the alterations required; leaving it, after all, however, in a great measure, to the discretion of the English artist; and in this state the plates were sent to England, to be introduced into the work, with the following distinct acknowledgment of the source from which they were taken, and the motive for introducing them, inserted in the MS. preface of the work:

"The drawings contained in the 'Voyage Pittoresque de la Syrie,' by Casas, amount to three large folio volumes. The publication of these being discontinued before the letter-press intended to accompany the engravings was printed, they are now incomplete, and, as far as I can learn, are likely to remain so. There are some few among these which are so accurate, as well as beautiful, that I have been induced to adopt such of them as give views of places and monuments actually visited and described in the course of these Travels. As these are almost in the nature of original drawings, inasmuch as they never have been, nor are ever likely to be, placed in the hands of the Public, as engravings usually are, with the descriptions and explanations necessary to the understanding them, I am sure the lovers of the arts will be obliged to me for bringing into more general view pieces of so much beauty and merit: and those who desire graphic illustrations of their reading, will find in them the most faithful and spirited delineations of the scenes which they profess to represent."

This will be enough to satisfy any candid mind, that there was no attempt at deception in this matter. But to make it clear, also, that this is not a new explanation, now for the first time offered, which some persons might be malicious enough to insinuate, the following ex-

By Mr. BROUGHAM.—Are those the identical engravings sent you by Mr. Buckingham, or merely copies of them?—They are the identical engravings.

Those engravings have then been given up by you to Mr. Bankes?—Yes. It was by mistake that they were not sent back with the manuscript.

Was it by mistake also that they were given up to Mr. Bankes?—No; that was by design. (14)

But they are Mr. Buckingham's property?—Yes; they were, in mistake, not sent back to Mr. Buckingham.

But they were designedly given up to Mr. Bankes?—Yes. (14½)

Were there not thirty drawings?—I cannot say; I have not any recollection of the number.

You will not swear then, that there were twenty or thirty?—No, I cannot. (15.)

Did you give up all the drawings to Dr. Babington?—Yes; every thing but one portfolio, which was kept back by mistake.

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tract is subjoined, from the Calcutta Journal, of August 14, 1822; the original reply of the author, to the article on the 'Travels in Palestine,' contained in the 'Quarterly Review': which will be found also in the Appendix to 'Travels among the Arab Tribes,' at p. 613:

"Mr. Bankes's drawings, of which I always spoke with the admiration they deserved, were of so superior a kind, that if copies of them had been given to me, as they were promised, neither this nor any other of the rude sketches made by me on the spot, would have been afterwards finished into vignettes for publication: but not being able to obtain the promised drawings in question, the next best thing was to make use of the materials within my reach, and accordingly some very masterly and accurate views, of a French artist, Casas, of various places on the *West* of the Jordan, as well as original drawings made from sketches taken with more care and leisure than they could be on the *East* of that stream, were sent home to be engraved for the larger plates; but the delay that took place in the publication, and the probable decline of interest in the subject by such delay, induced the booksellers, Messrs. Longman and Co., to omit all that Mr. Murray would have originally included, as tending to protract the publication in point of time, and add largely to its expense, and to confine themselves to the vignettes only, engraving these on wood instead of copper, and considering them only in the light in which they were intended, as merely appropriate embellishments, after all the more finished subjects had been necessarily excluded, because of the time and cost it would have taken to get them properly engraved. The portion of the MS. preface which related to these larger drawings, has been omitted along with the subjects to which it referred; and the *latter part* of the paragraph only, relating to the vignettes, has been published. In the part omitted it was explicitly stated, that the vignettes were among the least perfect of the subjects sent; but even in that which remains, there is sufficient to show that nothing like an attempt at imposition was made; for, after stating that many even of the vignettes were from original drawings, made after sketches taken on the spot, it is added, 'as this was the least expensive and humbiest way of adding graphic illustrations of the text, appropriate subjects had been selected from other sources, but invariably with a view to the elucidations of scenery, costume, or manners, and the accurate representations of places spoken of *in* the body *of* the work.' With respect to the plates, there is but *one* among the whole that is not original, which is the plan of the *ancient* Jerusalem, a thing that *must* have been borrowed, if given at all, unless it is supposed that a traveller could draw upon the spot, in the present day, a plan of a city as it existed two thousand years ago. But this is so distinctly stated in the preface, as to leave the reviewer without excuse. It is mentioned in these words:—'The plan of the ancient Jerusalem, from the best authorities, is that which usually accompanies the works of Josephus, and it will illustrate, better than any written description, the changes which have taken place in the site of this city.' Of the vignettes, *the whole* of those on the East of the Jordan are *original*, and the few which were from other sources, including Maundrell and Le Bruyn, besides being acknowledged, were only used by the publisher as illustrations of the text in the manner that Dr. Clarke's and other travels had been illustrated, without its then eliciting from this reviewer a single observation."

(14) Let it be noted that Mr. Murray, having already apologized for inserting in his Review libels which he acknowledged to be untrue, thus designedly and secretly assists the author of these libels to attempt at least to put the semblance of truth on the self same libels, after he had himself already publicly acknowledged them to be utterly unworthy of belief.

(14½) Mr. Murray's conduct, in this unlawful retention of another's property, to be used as a weapon against him in the hands of his bitterest enemies, will be detailed and commented upon in a future place.

(15) The fact is, that there were exactly thirty—twenty-eight being actually printed as vignettes to the heads of chapters, and the other two withheld by Murray, at the time he returned the portfolio of French engravings.

By Mr. GURNEY.—Are those two engravings now produced, some of those which were given up to Mr. Bankes?—Yes.

Mr. BROUGHAM.—My friend, Mr. Gurney, has asked you, whether you saw the letter from Mr. Bankes to Mr. Buckingham, before you gave up the engravings?—Never.

Had you not a letter from his father before you gave them up?—Yes. (15)

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(15) It is proper that the public should see this letter of Mr. Bankes, sen., in order to judge of the accuracy of the assertion made before, that Mr. Bankes, jun., not content with spreading his calumnies against Mr. Buckingham, in Egypt and Syria, by his own efforts, and sending them to the farthest verge of Asia by the hands of Mr. Hobhouse, also sent them home to his father, who, thereupon, addressed the following letter to Mr. Murray:—

*From H. Bankes, senior, Esq., to Mr. John Murray, Publisher.*

"SIR, "Kingston-Hall, Wimborne, 3d October, 1819."

"I have received a letter from my son, dated Thebes (in Egypt), 12th June, which is the occasion of my troubling you. He informed me that a person, named J. S. Buckingham, introduced himself to him some time ago at Jerusalem, under the pretence of being an intimate friend of Colonel Missett, and also of the late celebrated traveller, Mr. Burckhardt; that, in consequence of this supposed friendship with two so respectable men, and so well known to my son, he permitted Mr. Buckingham, *whose destination was to India, to accompany him for some time, and to take a copy of that part of his journal which was kept during this portion of his travels.*

"This ill-placed confidence has been requited in the way that such acts of kindness usually are by *ungrateful* and worthless people. Mr. Buckingham announces his intention of publishing his own travels, of which I have now before me an elaborate and pompous prospectus, in a Calcutta newspaper.

"I know not whether you have ever heard of this projected work; but as it is intended to be printed and published in London in a splendid manner, it is very probable that application may be made to you before it sees the light; in which case I wish to put you upon your guard against having any transactions with such an author as Mr. Buckingham, and also against laying before the public, parts of a very extensive and curious tour, in an imperfect state, which I hope and trust that my son will be induced to submit to them in the best and most complete form that he can *put his valuable researches* together whenever he returns.

"You will oblige me by making known what I communicate, with regard to the character of Mr. Buckingham and his intended work, in any way that you may deem proper, and I remain,

Your obedient servant,

"H. BANKES."

For this letter an action was brought against the writer, who at first, defended his conduct, but when the day of trial came, he shrunk from even calling his own son to support, by his oath, what he had written with his own hand, which was all that was required either in Murray's or in the elder Bankes's case to ensure *their victory*. He accordingly made overtures of submission; and, as Mr. Buckingham considered him to have been imposed on by his son, who was the chief offender, he consented to let the father off, without the odium of a public trial, on condition of his abandoning all justification, submitting to a verdict against himself, and paying *all* the costs actually occurred by the plaintiff in bringing him to justice, all which was readily acceded to, and Mr. Buckingham was satisfied. A short anecdote deserves to be mentioned in this place, as characteristic of the distinguished individual here spoken of,—the worthy father of the worthy son, whom Mr. Gurney characterised as the "descendant of an ancient house," and "heir to a splendid fortune." It is this:—In the course of the present proceeding it was thought advisable to subpœna the elder Mr. Bankes, in order, if necessary, to show, through him, that his son had made a more extended publication of his libellous letter, than even by giving it open to Mr. Hobhouse. The subpœna was served on Mr. Bankes the elder, at his seat, at or near Wimbourne, in Dorsetshire, and a sum of £10 paid him to defray his expenses to town. Being, however, an accurate accountant in these matters, (to which, perhaps, is to be partly attributed his son's similar care in pecuniary affairs) he made a stand for £20, which he demanded as the sum requisite to take him to London (travelling, no doubt, in his own carriage), though the attorney's messenger resisted this grasping demand. As it happened, however, the attendance of the elder Mr. Bankes was dispensed with; and, accordingly, the £10 was saved.

Did you give up the publication of this work, in consequence of the letter you received from Mr. Bankes, senior?—No; but I received a letter (16) from

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One word more, to show how small a compensation even £20 would be to Mr. Bankes, the elder, to attend with evidence in favour of Mr. Buckingham, whose name he had so little pleasure in even hearing, of which the following authentic story may be received in proof: An unfortunate Spanish gentleman now in London, among the refugees from that unhappy country, having met Mr. William Bankes's Portuguese valet, became, from understanding his language, sufficiently acquainted with him to ask the favour (as he seemed well-fed, well-dressed, and quite at his ease) to put him, if possible, in the way of getting pupils, or doing any thing honourable to add to his little stipend from the refugee fund. The valet, Antonio (and it may be mentioned to his honour) feeling compassion for a gentleman in distress, sought an opportunity to introduce him to the elder Mr. Bankes, at his house in Palace Yard. The old gentleman's curiosity expressed itself in various questions, the answers to which disclosed that the Spanish gentleman had passed a portion of his life in India. "Ah!" exclaimed the member for Corfe Castle, "and did you know or hear any thing of a certain Mr. Buckingham there?" "Yes," replied the unsuspecting and unguarded foreigner, "I was in Calcutta just after he had been banished from that city by the government there, for speaking the truth too freely in his Journal; and I remember to have heard from some persons who were witnesses of the fact, that when his house was broken up, and all its contents exposed to public sale, such was the attachment which some individuals had to his person and principles, that little articles were purchased, at four or five times their value, to be preserved as relics or memorials of one whom they esteemed, and considered to have been most unjustly persecuted."

The patrician could contain himself no longer. The unhappy foreigner, unconscious that what he was saying was gall and wormwood of the bitterest kind—unconscious that he was speaking daggers to his expected patron's ear—was coolly shown to the door, as a reward for the indiscreet fidelity of his narrative, and was lost in indignation and astonishment at what he could not but deeply feel, though it was altogether beyond his power to understand. He has since, however, learned—through the kind-hearted individual who meant, by introducing him to his patron, to do him a service—that the praises of Mr. Buckingham, even when merely narrated as being bestowed by others, was sufficient to seal his doom.

(16) The letter of Mr. Gifford is also sufficiently remarkable to be given here. It should be observed, that the manuscript of the 'Travels in Palestine' contained several exposures of the ignorance of Mr. Gifford, or whoever else was the editor of the Quarterly Review, on geographical subjects, and especially of gross blunders made by that work in its criticisms on D'Anville, the great French geographer, and the late Dr. Clarke, the eminent traveller. Whether it was these exposures that excited his wrath, and made him wish to blot out 50 or 60 pages of the work, cannot now be known; but either this, or a phrenzy of intoxication, seem to be the only explicable causes for such a production as the following:—

*To John Murray, Esq., Albemarle Street.*

"My dear Sir, "*James's Street, June 7, 1819.*

"I return you the MS., which I have read. It is certainly interesting and important in some degree; but will, I suspect, appear tedious in more places than one.

"The writer is the most miamiable person that I ever travelled with, and I have travelled with a good many. I have not marked one generous sentiment, one trait of liberal and correct feeling. He is a daring, but an ignorant infidel; and proudly imagines, while he is only combating the idle trash of a few poor bigoted and illiterate monks, which no protestant thinks worth notice, that he is demolishing Christianity. Of our blessed Saviour and his Apostles he speaks, not only with the rancour of an Apostate, but with the revengeful malice of one who had received a personal injury from them. He has the venom of Voltaire, without an atom of his wit; and the fury of Condorcet, without a spark of his vivacity; he is, besides, obscene and even filthy. I am sorry to speak so severely of any man: but in saying that the Bishop of Calcutta approved his MS., I firmly believe that he has advanced an atrocious calumny. I know Dr. Middleton too well to think for a moment that he would lend the sanction of his name to the exploded ravings of blasphemy, vented in the language of the brothel. I would say this to the author's face; and at any rate it is better to say it now, than after such a work has met the eye of the world.

"With all this, I rather wish that you would publish it. It cannot be enlivened, but it may be rendered far less objectionable, and this with no great trouble. Omission is all that is required: the MS. seems already to have fallen into the hands of some timid, but judicious friend. Let him only exert his pruning knife with a bolder hand. There is, at present, too

Mr. Gifford; and it was such that I could not venture to publish, without affording Mr. Buckingham's friends the opportunities of altering, the work.

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much quotation, and that from books in every one's hands, Josephus, the Bible, &c. It is surely better to reduce the volume forty or fifty pages than to have it unreadable.

"Another word. I do not see why the printers are to be corrupted; they have souls to be saved, I suppose, as well as the rest of the world. I should, therefore, make it a point (if the MS. is not to be re-copied), that the profaneness and obscenity should not only be crossed, but fairly erased and blotted out, before it is put into their hands.

"Ever, dear Sir, yours, &c. "W. GIFFORD."

Now, no such erasures or omissions as are here declared to be indispensable were made. Such as the book was in Mr. Gifford's hands, such was it in the Bishop of Calcutta's,—such was it in Messrs. Longman's, and such is it before the world. It will be an agreeable contrast to Mr. Gifford's opinion, to see what is said of the *same* book, before it was actually published, by a Christian divine, the Reverend Samuel Burder, a man who, from the very nature of the studies to which he had devoted the best part of his life, 'Illustrations of Scripture, from Oriental Travellers,' is likely to have read more books of Travels in the East than almost any man of his day. This clergyman borrowed a copy of the work while it was in progress through the press from Mr. Rees, of the firm of Longman and Co. the publishers; and this was the note with which he accompanied its return, dated Oct. 30, 1821:—

"Mr. Burder returns 'Buckingham's Travels in Palestine,' with many thanks to Mr. R. for the perusal of it. He has made many extracts from it for the new edition of the 'Oriental Customs,' and his new work in continuation of it. He considers Buckingham's Travels the very best book he ever perused of the kind, and thinks it will stand high in the first rank of that kind of literature."

To show, too, that this opinion of Mr. Burder (thus *privately* expressed, and therefore by no means binding on him, out of regard to what is called consistency, to support at any subsequent period) was not in the least altered, even by the malignant imputations of Messrs. Gifford and Bankes, in the Quarterly Review, *after* the work appeared, the following note from Mr. Burder, written four years after the first, and when he was about to be called as a witness on the trial of the action against Murray for the libels contained in Mr. Bankes's criticism, is given. It is thus:—

"To J. S. BUCKINGHAM, ESQ.

"*London, Paternoster Row, March 4*, 1825.

"SIR,—If it will answer any important object in the statement of your case, as far as my evidence is required, I wish an opportunity to be allowed me, by the question that may be put, of proving, which I am sure I can most satisfactorily, that the account you have given of the lake of Tiberias, and the calm which there succeeds a storm, and which the reviewer charges as *tinctured with infidelity*, is a very happy illustration of the passage, and a corroboration of the Gospel history.

"As to the charge of indecency, I am ready to assert that your volume is, as to its language and representation, the MOST CHASTE AND CORRECT of any volume of travels I EVER PERUSED.

"You are quite free to make any use you please of my testimony, as I should be happy to serve your cause, which I consider to be that of truth and justice.

"I remain very respectfully yours,

"SAMUEL BURDER."

To make the refutation of Mr. Gifford's letter complete, all that is wanting is to show that it was *not* a calumny for Mr. Buckingham to say that his MS. was in the Bishop of Calcutta's hands, and that he himself permitted his name to be used in the prospectus, as approving generally of the publication of the work. This letter (already published in India, and there undisputed,) with the few remarks that then accompanied its appearance in the 'Calcutta Journal' of August 19, 1822, is as follows:—

"To JAMES S. BUCKINGHAM, ESQ.

"SIR, "Chowringhee, June 28, 1820.

"I received your letter yesterday evening, at a time when I could not conveniently reply to it. I thank you for the offer contained in it to lay before me certain statements relative to one of the causes, which, as you inform me, have delayed the publication of your Travels. I must, however, decline the proposal, not wishing my name to be more closely connected with the work in question than it is already. I have, indeed, some reason to apprehend, that more is *believed* upon this subject than is actually true. After having done me the favour to send me copies of some Greek inscriptions collected by you, in which, as being remains of Christian and classical antiquity, I took some interest, you sent me your MS. Travels, with an intimation that my revision of the work would be acceptable to you. I informed you, however, on receiving the MS., that I could not think of taking upon myself any such responsibility; and I requested that no use whatever might be made of my name beyond

Can you say that it was not in consequence of any letter from Mr. Bankes's father, that you gave up the publication?—— (16½)

Lord Chief Justice.—The defendant cannot be answerable for what his father may have done. I cannot hear any evidence about that. (17.)

*Dr. Benjamin Babington examined by Mr. Brougham.*

You are a physician?—Yes.

Have you travelled in the East?—Yes.

Did you accompany Mr. Buckingham?—Yes.

How long have you known him?—From the spring of 1815.

Have you and Mr. Buckingham travelled together?—Yes.

Was it before 1816 that you travelled?—Yes.

Have you seen Mr. Buckingham copy ancient inscriptions?—I have.

Many?—No, but few.

Have you seen *fac similes* of those inscriptions in Mr. Buckingham's possession?—Yes, at the time he copied them.

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what was already said in your prospectus, of my thinking favourably of the nature of your undertaking; to this I did not object, as implying nothing more than the respect which is excited by zeal and enterprise in exploring tracts highly interesting, and some of them hitherto but little known. Still, I told you that I would look at a few places of your MS., and if any thing occurred to me, I would readily suggest it. All that I remember to have actually read was a chapter near the beginning, describing your voyage from Egypt to some part in the Holy Land, and a chapter upon the ruins of Jerash; and, on those portions of the book, I objected to the use of (I believe) two expressions, 'supernatural' and 'miraculous,' which were incorrectly, and might *seem* to be profanely applied; not that I could suppose any evil intention, as I had heard you speak with reverence of the Scriptures, and remark, I think, the very first time I saw you, how entirely your own observations bore witness to the accuracy of their local details. I felt it, notwithstanding, to be my duty to advise you to look over your MS. with especial reference to any similar blemishes, which might produce a mischievous effect, though none were intended; and such passages, if any still remain, may very well have been classed among the obnoxious matter, to which your letter alludes, as one of the alleged reasons for suspending the publication. I recollect, also, that I marked a sentence in a passage quoted by you from the Latin translation of some Greek author (I think Josephus), as not giving the true sense of the original. Whether I might not put a pencil mark against one or two other passages, which presented themselves casually, and seemed to be capable of improvement, I cannot, after this interval of time, precisely affirm; but I am confident that my connected perusal was confined to the two chapters already mentioned; and even those I did not examine with the severity which I should have thought indispensable, if I had considered myself as being in any way pledged to the revision. What I read, I read lying on my couch, to which I was confined during nearly the whole of the time that your papers were with me; and I believe that you called upon me only a day or two before I returned them, and found me in that situation. I by no means, however, wish you to infer that I consider the statement in your letter as being substantially at variance with this account, or that I attribute any erroneous notions on this subject, which may have gone abroad, to the representations made by yourself; a knowledge of the circumstance that your MS. was even in my hands, may easily have created a belief that it was received for a purpose, which, on my receiving it, I expressly and unequivocally disclaimed. I am, sir, your obedient servant,

"T. F. CALCUTTA."

"Let any impartial person read this letter, written evidently under the influence of a timidity and alarm, natural and even honourable to a man holding so distinguished a situation as head of the church in India, and let him say whether it breathes even an *insinuation* of reproach? It was rather too much to expect that an author, who went to sea at nine years of age, who never had any education since that early period, but such as he could steal for himself, whose life has been necessarily passed more with persons of loose and profligate habits, such as *every* ship exhibits, than among those who are more choice in their expressions than sailors will ever be; it was too much to expect that a book written by *such* a person should come out of a bishop's hands untouched. But after all, to what did the emendations amount? To a correction of a few expressions that admitted of improvement, and to an inaccurate use of the terms 'miraculous' and 'supernatural,' the distinction between which might have been clearly understood by a learned and eminent divine, but which are even to this hour far from clear to the individual who had then used them, it seems, in a wrong sense, but who, having no intention to apply them wrongly, altered them without a moment's hesitation, as the bishop had suggested."

[16½] Whether Murray gave up the work in consequence of Gifford's or Bankes the elder's letter, it is for the reader to decide, the dates of both letters are given: Gifford's in June—Henry Bankes's in October 1819. The work was not delivered up by Mr. Murray to Dr. Babington until January 1820.

(17) This was, no doubt, strictly and legally correct:—but the reading portion of the public already know the transaction between Mr. Murray and Mr. Bankes, the elder; and, therefore, its omission here is of little importance.

Have you seen Mr. Buckingham make *drawings*?—No. (18.)

Do you remember being at Madras?—Yes.

At what time?—At the end of 1818.

Did you there see in Mr. Buckinghom's possession any manuscript note-books of his travels?—I did.

Do you recollect seeing this book (handing a book to the witness) in 1818?—I saw such a book as this.

Did you read it?—I cannot say whether I actually did. I believe I read a book of this sort; but I cannot precisely recollect. There was a small book like this in which an account of Jerash was contained.

Did you *see* the original notes of the account of Jerash?—Yes, and Mr. Buckingham read over part of them to me.

Look at this book (handing a book), which is dated March 1816, and say whether it is the account of Jerash of which you speak.

The Lord Chief Justice.—This will not show when the manuscript was made. These may be the very notes of which Mr. Bankes complains. (19.)

*Examination continued.*

Did you at any time go to Mr. Murray, the bookseller?—Yes, I went to Mr. Murray to look after Mr. Buckingham's manuscript, in consequence of a letter which I received from Mr. Buckingham, requesting me so to do.

Did you get the manuscript?—I did.

Look at that (handing in the same manuscript which Mr. Murray before expressed his belief to be the manuscript sent to him).—This is the manuscript.

When did you get it?—About the end of January or beginning of February 1820.

Was the 'Travels in Palestine' printed from that manuscript?—I do not know.

What did you do with it when you got it?—I took it to Messrs. Longman and Co.

Have you compared the manuscript with the printed book of Mr. Buckingham's Travels?—No, I have not. (20.)

Did Mr. Buckingham introduce you to any friends in Egypt?—Yes, to Mr. Burckhardt and to Colonel Missett.

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(18) During the time that Dr. Babington travelled with Mr. Buckingham, the few drawings that were taken were done entirely by the former, as being the more competent to that task of the two: while the latter was wholly employed in collecting materials for the formation of a more accurate chart of the Red Sea; in taking bearings, soundings, sketches of head-lands, tracings of the line of coast, &c.; which materials still exist in abundance.

(19) This is only one of the difficulties with which the rules of evidence abound. The only evidence which it was possible for Mr. Buckingham to produce, of having paid a subsequent visit to Jerash, was to produce notes in manuscript, containing new facts, not to be found in any record of the observations made on the first visit, whether by Mr. Bankes or himself. The only persons who accompanied him, were two Bedouins of the desert, whom it would be impossible to find, or bring into court, (for these were not, like Mr. Bankes's interpreter and valet, always within call). If the notes had been received as those seen by Dr. Babington at Madras (which he states his belief that they were), nothing would have been more easy than to have compared them with other notes, to be produced by Mr. Bankes; and if the one were copied from the other, it might have been clearly proved, and their authenticity thus rendered liable at least to suspicion. But no such course was attempted to be pursued.

(20) Dr. Babington having read the work over twice in the manuscript, before it was sent to Longman and Co. to be printed, had no motive for reading the printed work afterwards; and, as he had no idea that any questions would be raised on a point so easy for any man to determine by a very slight examination, it is hardly to be wondered at that it should not have been done by him. When it left his hands for the printers', he saw no more of it till it was produced in court; the proof sheets being corrected by an ordinary printer's reader, without the supervision of any more careful eye (a fact, by the way, sufficient of itself to account for much greater errors than have yet been pointed out in its contents.)

Did Mr. Buckingham appear to be on intimate terms with those two gentlemen?—Yes.

When did the introductions take place?—One in November 1815, and the other in December of the same year.

Did you receive any civilities from those gentlemen in consequence of the introduction?—I did.

From all your knowledge of Mr. Buckingham, and from your intercourse with him, what opinion do you entertain of his character?

The Lord Chief Justice.—General conduct cannot, I think, be made the subject of inquiry.

Mr. Brougham.—I submit that in this particular case it may, my Lord; for one of the defendant's pleas is, that "Mr. Buckingham's conduct in Egypt and Syria was notorious," &c.

The Lord Chief Justice.—That would be at the time of the publication of Mr. Bankes's letter; but your question refers to 1815.

Mr. Brougham.—The defendant's plea alleges the notoriety of the plaintiff's conduct, both *before* and at the time of the publication of the letter.

The Lord Chief Justice.—I think, Mr. Brougham, it is for the defendant to prove his affirmative.—To which Mr. Brougham assented. (21)

*Examination continued.*

What drawings did Mr. Murray give up at the same time with the manuscripts?—Perhaps, twenty or thirty. Nearly enough to make vignettes for each chapter.

You say you have seen Mr. Buckingham copy inscriptions?—Yes.

Have you not seen him make sketches of the coast and head-lands in the Red Sea?—I cannot say positively, but my impression is that I have. (22)

*Cross-examined by Mr. Gurney.*

Can you state that the drawings which were delivered with the manuscript were made by Mr. Buckingham?—No; I have no positive knowledge of that.

Were not those drawings made from engravings?—I do not think they were, unless in the case of one or two maps. (23.)

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[21] As the rules of evidence (no doubt correctly and legally observed by the Chief Justice) prevented the question put by Mr. Brougham from being answered by Dr. Babington, it will be satisfactory to the reader to see the following note, which was sent, on the day it bears date, soon after the trial, to the plaintiff; and which, in pursuance of the permission given in it, is here introduced. The note is as follows:

"To J. S. Buckingham, Esq.

"My Dear Buckingham, "*Stamford Hill, Oct* 25, 1826.

"It has occurred to me, that as you are about to publish the report of your trial, my testimony may be useful on the question as to your general character, which was put to me by Mr. Brougham, but overruled from the Bench, and consequently not answered.

"On this important point, I can conscientiously say, that although I disagree with you in politics, and especially on the question of a Free Press in India, yet I have always believed you sincere in the opinions which you entertain; and, during the course of eleven years' acquaintance and friendship, I have ever found your conduct to be consistent with your professions, and both to bespeak you a man of strict honour and gentlemanly feeling.

"Believe me, my dear Buckingham, to remain yours, ever most sincerely,

"B. Babington."

(22) A large book, full of such sketches, taken by Mr. Buckingham, was ready to be produced in court; but the objection just before raised by the Lord Chief Justice to the receiving his notes, *as seen* and recognized by Dr. Babington, in evidence, because they *might* have been copied as well as original, and because the exact identity could not be sworn to by some person who actually *saw them taken* by the plaintiff himself, prevented the book being handed in.

(23) These maps were D'Anville's *ancient* Geography of Palestine, and the *ancient* plan of Jerusalem, from Josephus, which could only have been given from these authorities, as no man could now draw an *original* map or plan of either the one or the other without necessarily following these authorities.

*Mr. Rees examined by Mr. Hill.*

What are you, Sir?—I am a partner in the house of Longman and Co.

Did you receive that manuscript—(handing in the manuscript exhibited before)—from Dr. Babington?—We received from that gentleman some manuscript, and I believe this to be the same.

What did you do with it?—We put it into the hands of Mr. Spottiswoode to print.

Was it afterwards published?—Yes.

In quarto?—Yes.

And a second edition in octavo?—Yes.

Were there any engravings in the work?—There were.

The Clerk, at Mr. Brougham's desire, here read the following passages from Mr. Buckingham's printed book of Travels; in order, as the counsel expressed himself, to show—first, that there was the most distinct acknowledgment of the sources from which he had derived assistance; and next, that there was no intention whatever, on the part of Mr. Buckingham, to withhold from Mr. Bankes either the mention of his name, or his full share of praise; but that, on the contrary, he had repeatedly, in various places throughout his printed Work, spoken of his talents, and mentioned him as his companion in all the descriptions of the places they had visited together. The following passages, from the "Travels in Palestine," were accordingly read:

"Many of the vignettes are from original drawings, made after sketches taken on the spot; and as this is the least expensive and humblest way of adding graphic illustrations of the text, appropriate subjects have been selected from other sources, but invariably with a view to the elucidations of scenery, costume, or manners, and the accurate representations of places spoken of in the body of the work."

"The ancient map of Palestine is taken, with very trifling alterations, from D'Anville, as the most generally known and approved authority on this subject, and the one most frequently referred to."

"The plan of the ancient Jerusalem, from the best authorities, is that which usually accompanies the works of Josephus; and will illustrate, better than any written description, the changes which have taken place in the site of this city."

"The plan of the ruins of Geraza, in the country of the Decapolis, beyond the Jordan, is laid down also from actual observations, corrected by two subsequent visits to the spot; as well as the plans of particular edifices, amid the interesting remains of this ancient city. And the Greek inscriptions found on the friezes, columns, and altars there, have been copied with the utmost care, and given as nearly as possible in their original form.

"I wish I could have added to these the valuable drawings of my friend and fellow-traveller, Mr. Wm. Bankes, M. P. These I had no time to copy, though I am sure his liberality would have admitted of it; for while he was engaged in taking them, I was occupied in increasing our common store in another way. It is to be hoped, however, that with the illustration which this gentleman's known talents, pure taste, and extensive erudition, will be able to give to his fine collection of views in this country, and in Nubia, they will not remain long from the public."

"While the guides and our servants were taking some refreshment, Mr. Bankes and I ascended to a convenient spot where we could both conceal ourselves from the sight of passengers below; and while Mr. Bankes was employed in taking a hasty sketch of the whole view as it appeared from hence, I caught the opportunity of throwing together the recollections of our route from Jerusalem thus far, as not a moment had yet offered itself from the time of our leaving that city, in which it would have been safe to have written, or to have excited curiosity by the appearance of such unusual things as pen and paper."

"Having done this, Mr. Bankes made a second excursion with the guides, and I remained to keep the impatience of the rest in play, to answer questions from passengers, and to prolong our stay to the last possible moment."

"The day broke in heavy rains, and our Bedouin guides refused to proceed, as the horses were already wearied, and shelter could not always be commanded on the road. The desire of Mr. Bankes and myself to revisit the ruins of Jerash was equally strong; and since all our endeavours were not sufficient to prevail on our guides to brave the weather, we determined on stealing to the ruins in the interval, at all risks which it might involve."

"As it was impossible, however, to absent ourselves from so inquiring a company without being noticed, some motive was necessary to be assigned, and it luckily happened that one

really presented itself of sufficient force to be admitted. On the preceding day, while writing the notes of our route from Jerusalem to Jerash, beneath a rock, I had left a knife behind me, and it was professedly under the hope of finding this that we set out on foot to go a journey of two full hours over a steep and rugged road, and amid a heavy rain, which threatened long continuance."

"Mr. Bankes now prepared to draw from hence a view of the interior of the theatre, including chiefly its front and scene, being completely sheltered from the rain, as well as from sight, by the arched covering of the passage under which he stood; and in the meantime I employed myself in measuring the principal features of this building, in laying down, by compass, from an overlooking eminence, the relative positions of the principal edifices, and in forming as accurate a ground-plan of the whole as the unfavourable circumstances of the moment would admit."

"A range of columns extends along the interior of the front, or facing toward the audience; and, with reference to them, behind the stage, or between the stage and the scene. The intercolumniation of these is irregular, from their being made to leave the interval, opposite the front doors, clear. They are, therefore, disposed in four divisions, of four pillars each. These cover the space of wall in which the niches are; the niches being seen through the intercolumniation of the two central pillars of each. Behind each of these rows of four pillars, are four pilasters, corresponding in order, size, and position, and placed like the columns, two beside each niche. In addition to this, there is, on both sides of each of the three front doors, a smaller Corinthian column, standing in a sort of recess."

"It occurred to Mr. Bankes, that, notwithstanding the ruin of some parts of this edifice, it was, perhaps, on the whole, the most perfect Roman theatre now remaining in the world. He had himself seen all those of Italy; and in Greece we know how much they are destroyed: and he remembered none so perfect as this, more particularly as to these more interesting parts, its stage and scene. The complete examination of this would, therefore, have thrown much light on the nature of such structures among the Romans, and would have helped us to understand more, perhaps, of their stage management, of scenery, entrance, exit, &c. than we now know. We even thought it probable, that some of the statues which once filled the niches above, might be found in a tolerably perfect state, on clearing away this rubbish; as if we sought out causes to increase our regret, at not being able to put our desires into execution. We drew back often to look upon the whole, admiring the rich decorations of the Corinthian order, displayed in all its pomp on this small, but highly finished work."

"The ranges of seats, continued all around the semicircle, without being interrupted by any species of division throughout their whole length, gave a simple grandeur to the effect produced by these unbroken sweeps of the circle, rising in continued succession one above another. The blocks of the benches were much longer than the breadth necessary for one person, so that the space for one individual seat was in no way defined. *Mr. Bankes thought* that he had seen Greek letters engraved on them, and conjectured that they might have served as numbers; but after a very careful examination *this did not appear to me to be the case*, and it is most probable that they might have been some of the arbitrary signs of the workmen for their guidance in the succession of the blocks, as such signs are very commonly seen in ancient Roman masonry."

*Dr. Babington recalled and examined by the Lord Chief Justice.*

Have you seen Mr. Buckingham copy inscriptions in India?—I have.

In what language?—The language was then unknown to me, but I learnt afterwards that it was Sanscrit.

Mr. BROUGHAM.—My Lord, I have evidence to prove the dissimilarity of the plan of Jerash sketched by Mr. Bankes, and that published by the plaintiff. I wish to know whether my Learned Friends, on the other side, desire that evidence to be given now, or in reply.

Mr. GURNEY.—It had better be given now.

Mr. BROUGHAM.—I call on the other side then to produce the original plan of Jerash.

Mr. Gurney gave it in.

*Mr. Arrowsmith examined by Mr. Brougham.*

Are you a chart and map maker?—I am a geographer.

Do the original plan of Jerash now before you, and that inserted in the printed book of Mr. Buckingham, differ?—They do.

In what respect?—They differ very materially in some of the bearings.

Can you mention any point in which they differ?—In one instance there is a difference of seven points of the compass.

Is that an important variation?—Yes.

In how many places out of ten do the bearings of the two plans differ?—In seven or eight out of ten.

Have you examined the figures of the places laid down in the plans?—I have.

Do they differ?—They do.

Do you observe a figure which in the original plan is a perfect square, and in the printed one is only two sides of a square?—Yes; it is No. 18, the bath.

In the printed plan there are two rows of pillars outside the bath; are there any pillars in the original plan?—No.

Look at No. 15 in the printed plan; is that like the same figure in the original drawing?—It is very dissimilar.

In what respect?—In size and shape altogether.

Does the figure No. 10 differ in the two plans?—It does.

Are there other differences besides those you have mentioned?—Yes, a great many.

Have you compared the printed plan with the drawings in Mr. Buckingham's note book?—I have.

Do they agree?—They do.

That, my Lord, is the book which Dr. Babington spoke of as having seen at Madras in 1818.

This, my Lord, is the plaintiff's case.

## SPEECH OF MR. GURNEY FOR THE DEFENCE.

Mr. GURNEY.—May it please your Lordship and Gentlemen of the Jury,—My Learned Friend, Mr. Brougham, commenced his speech by assuring you that he would not preface the plaintiff's case with a single observation; I confess, Gentlemen, I was somewhat surprised at such abstinence on his part; but I was not less surprised at the manner in which he has kept his word. In the speech of an hour and three quarters which he has addressed to you (I don't mean to say that his speech was either long or tedious) my Learned Friend has most religiously—you will agree with me—he has most religiously kept his word; and he has not uttered a single observation but merely stated the facts of his case. (*Laughter.*) But if, Gentlemen, the specimen which my Learned Friend has this day given, be a specimen of his forbearance and abstinence, I should be glad to know in what exuberance of observation, in what bitterness of sarcasm, my Learned Friend could indulge when not under the control of abstinence and forbearance. My Learned Friend has admitted that my client is a gentleman of known talent—a gentleman of well known taste, and of extensive erudition—the heir to an ancient house (24) and a splendid fortune (25)—a gentleman who, instead of wasting his early years in dissipation, has devoted them to the advancement of science and literature (26); and who, with a view to the illustration of ancient history, both sacred and profane, has made journies into countries in which no man can travel without

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(24) Therefore, the more incumbent on him to support the reputation of his family by scrupulously honourable conduct.

(25) Therefore the more incumbent on him to use that fortune liberally, and to be superior to avarice or meanness.

(26) But who, after a delay of more than ten years, with every advantage that wealth, leisure, and influence could afford him, has produced nothing, except, indeed, the article in the 'Quarterly Review,' in which he slandered his fellow-traveller in terms of such bitter malignity, and sounded his own praise in strains of such exaggerated self-adulation, as are scarcely to be paralleled in the whole range of English literature.

considerable danger (27); into countries which, though once highly civilized, have long been in a state of barbarism. In this manner did Mr. Bankes spend many years of his life, some before and others after he became acquainted with the plaintiff.

In the end of the year 1819, or the beginning of 1820, Mr. Bankes arrived at Trieste; and there *I cannot deny* that he gave to Mr. Hobhouse the letter which my Learned Friend, Mr. Brougham has called a libel (28). At the time the acquaintance commenced between Mr. Bankes and the plaintiff, Mr. Bankes was at Jerusalem preparing for a journey into those countries of which Mr. Buckingham has given an account in his work. The account which my Learned Friend, Mr. Brougham, has been pleased to give of his client is, that he is a sea-faring man; one well acquainted with the navigation of the Red Sea; that a treaty of commerce having been entered into with the Pasha of Egypt, and so forth. Now, Gentlemen, what does that account amount to in plain language? To nothing more than this, that some merchants in Egypt, having occasion to make some importations of goods from India, wanted a messenger to go to Bombay, and they employed Mr. Buckingham for that purpose; but he, instead of pursuing the journey for which he had been paid, left the despatches to shift for themselves (29); and that such was the opinion

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(27) Although it is urged against Mr. Buckingham as a crime, that he did not travel with the same speed in this *dangerous* country that he might have done over the safe post-roads of Europe.

(28) Now that this was proved by a living witness, it was in vain to deny it any longer; although, up to the moment of Mr. Hobhouse's appearance in court, every attempt to get this admission failed; and this continued refusal, and implied denial, was the sole cause of two years' delay, and nearly £700 additional expense to the *plaintiff* (which is not to be repaid) for measures necessary to force this proof of publication.

(29) That this is false, and known to Mr. Gurney himself to be so, let the following letter prove. It was printed four years ago in the 'Calcutta Journal' of December 22, 1822, and since in the Appendix to 'Travels among the Arab Tribes,' at page 616, and has been in Mr. Gurney's hands for these two years past, at least. The introductory observations, and the letter to which they apply, are as follow:—

"The manner in which I discharged this trust, was such as I can prove to have been most faithful, honourable, and even at more hazards than I was bound to do. On my landing at Soor, in January, about ten days after leaving Alexandria, the country was found to be in such a state of commotion, from political feuds between the Pashas, that there was no moving without their firmans and protection; and all the conversation which I had with the persons of that place leading to a belief, that the difficulties of getting through the country would increase rather than diminish with time, I was determined that Messrs. Briggs and Co.'s interest should not suffer, as far as I could prevent it, and, accordingly, as soon as it was decided that I could not convey their despatches as speedily as they might be sent through the foot-messengers of the country, who can travel in safety where a stranger would risk being plundered, and perhaps murdered, I obtained, through a merchant of Soor, a faithful person to convey these letters direct to Aleppo, with instructions to Mr. Barker, the consul there, to forward them through Bagdad by an Arab on a dromedary, without delay; adding, that as the chief object of my journey was to follow up these letters by personal explanations, on which account Briggs and Co. had given me a letter of credit for the mere expenses of the road, I should come after them as speedily as could be effected without risk, which I was bound both on my own account as well as on account of the ultimate end in view, not heedlessly to encounter. To show that this trust of Briggs and Co. was thus faithfully discharged, by my thinking of their interests before my own, and that I also hoped to get to Aleppo soon after, I insert here the following copy of a letter, with date, signature, &c. complete, which will show that not a day was lost in the great object of discharging the trust reposed, as far as circumstances over which I had no control would possibly permit. The original of the letter is in my possession, and may be seen by any one desiring to inspect it: the copy is as follows:—

*To James S. Buckingham, Esq.*

"*Aleppo, Jan.* 25, 1816.

"DEAR SIR,—I had yesterday the pleasure to receive your favour of the 8th instant, and there being no conveyance for your letter for Messrs. Forbes and Co., I have sent it by an express messenger to the resident at Bagdad, with a request that he will forward it by first opportunity to Bombay.

"The charge of that expedition will be Ps. 160, say piastres of the G. S. As you said you would incur the expense of 40 to 50 *dollars* for an express, I presume you meant tallari, or

of Mr. Buckingham's employers is clear, from the fact of his having afterwards been obliged to return a part of the money which he had received for undertaking the journey (30). That, Gentlemen, is the true history of Mr. Bucking-

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hard dollars; in which case I have not exceeded your limits for that object: but, if by dollars you mean piastres of the G. S., I shall be sorry not to have fulfilled your intentions.

"As you do not inform me when I may expect the pleasure of seeing you, I shall take the liberty not to put off a shooting-party that I have projected, as soon as the weather will permit. But if you should arrive during my absence, which will be of a fortnight, my family will have the honour of performing the rites of hospitality until my return.

"My shooting station is in the *Amk*, at a noted place called *El Surai Morscloglu*, on the direct road between Antioch and Aleppo, about ten hours distant from the former, and eleven from the latter. If you should be fond of shooting, and will do me the honour to join my party, I promise to show you excellent sport.

"Mr. Vigoroux is not yet arrived here. I need not say that due honour will be shown to Mr. Lee's letter of credit in your favour.

"I have desired my agent at Latachia, to whom I send this letter, to furnish you with money, if you should be in want of any.

"I have the honour to be truly, dear sir, your most obedient servant,

"J. Barker."

(30) The history of this *refunding* deserves to be told at length: as the mere fact would otherwise seem to imply a confession of having misappropriated the sum expended. The following is the account of it, sent originally to England in a letter to Dr. Babington, dated Calcutta, December 31, 1820; afterwards published in the 'Calcutta Journal' of December 22, 1822; and since repeated in the Appendix to 'Travels among the Arab Tribes,' at page 630, this having been also in Mr. Gurney's hands for at least two years:—

"I have since heard, through Mr. Rich at Bagdad, that, some weeks after I had left Aleppo, Mr. Barker received a letter from Alexandria, stating that Mr. Briggs had arrived at that place, had disapproved entirely of Mr. Lee's project, and of his undertaking to pay for my journey, and having learnt that I had been much longer in getting to Aleppo than was expected, had written to Mr. Barker to say that, if the money for my journey had not been advanced, he was not to do so; and if it had, he was to write on to Bagdad to Mr. Rich to authorise him to recover it, as I had not made the haste I ought to have done, and had therefore forfeited my claim to their stipulation of paying my expences.—I shall not stop to say how unhandsome this return was for my endeavours in their service. You remember well enough that when I was at Alexandria, I should not have thought of setting out again to India, indeed I had not the means, were it not for the pressing instances of Mr. Lee, who voluntarily offered to pay my way, on Briggs and Co.'s account. No time was limited, no route was positively fixed, and no sum was named. It was generally understood that I should go as quickly and as cheaply as I could, and that whatever the actual cost was I should be repaid. Every one must know that to me, who had a dependant family in England, the mere payment of my actual expenses, (which was all they promised or I claimed), was but a poor remuneration for all the risks and inconvenience of a journey to India by land, the loss of all the time it occupied, and the probable chance of being sent out of the country a second time, for the want of a license, when I got there. But to give orders to arrest me, and stop all my supplies in the middle of Asia, leaving me no means of going forward or returning, was an act of cruelty and barbarity which until then I thought no English gentleman could be capable of, more particularly as *I had* done my best to get on, whatever they might have thought; and the impediments of a disturbed country, unsafe routes, sickness, &c. by which I was so constantly obstructed, were not of my own seeking, nor within my power to remedy. This order of theirs was, however, ineffectual; for long before it had ever reached Mr. Rich at Baghdad, I was at the end of my land journey in Persia, and soon after arrived in India, where the Red Sea scheme ended; and after losing a whole year in time (and having not one rupee of reward beyond the actual payment of my expenses), I was thrown completely on my own bottom, and obliged to look out for employment to get my bread.

"I entered then, as you know, on the command of the ship *Humayoon Shah*, for a voyage to Bussorah. This I made, and on my return to Bombay, Mr. Briggs himself was there. A demand was now made by him on me, to refund the whole of the money I had received on their account, for my journey, on the plea that I had not made the best of my way across, and that, therefore, the purpose which I set out to accomplish was not effected. I replied, that it was no part of our stipulation, that my expenses were to be paid *if* the object of the Red Sea trade *succeeded*, or to be *refunded* if it did *not succeed*; for on such uncertain conditions I would not have set out. My journey was simply to bring to India the original of a treaty of commerce with Mohammed Ali Pasha, to which I was a party, promising security and easy duties to such merchants in Bombay as chose to rely on his faith, and to follow this up by any thing I might think useful to be added in confirmation of this from my own knowledge. This journey *I did* perform; this treaty *I did* bring; and these representations *I did* make. In the execution of this task, I had met with unexpected and unsought obstacles, which nothing but great perseverance could overcome. I had been several times in danger of losing my life,

ham's mission, as my Learned Friend, Mr. Brougham, has been pleased to call it. Mr. Buckingham does not deny that he introduced himself to Mr. Bankes (31); but then, my Learned Friend, Mr. Brougham, says, that Mr. Buckingham and Mr. Bankes were travelling together on an equality; and that Mr. Buckingham had a right to avail himself, in his work, of all the information he may have derived from that journey. In order to enable you to form a just and proper decision upon the question between those parties, it is material that you should know how the parties became acquainted. Of that more material part of the case, my Learned Friend, Mr. Brougham, has not thought fit to offer any evidence (32); but I shall now show, Gentlemen, how this introduction took place, and the relative situation of the plaintiff and defendant during the journey; in short, I shall establish the truth of the justification, and substantiate every allegation made by Mr. Bankes, to the letter (33) upon the record; and you will then see what little right Mr. Buckingham has to complain. Indeed, I rather wonder that Mr. Buckingham should

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and was delayed by sickness; but during the whole of this protracted period of nearly twelve months, I had spent only about £400 sterling. My friends in Bombay, indeed, said, I was not only fully entitled to this, but that, if Mr. Briggs had done his duty, he would have made me a present of £400 besides, as salary for that period. However, I claimed no more than I had actually spent; while he demanded it back again, knowing, at the same time, that I was deeply in debt, and had not a rupee in the world! In this dilemma, I agreed to refer it to arbitration, letting him select one judge, myself another, and these two between them a third; this he refused, by saying, that the liberality of Indian arbitration would grant me rupees instead of shillings, and that I should be sure of too favourable an award! He then consented to receive back half; expressing his conviction at the same time, that the whole £400 had been spent on the journey, and his belief that no portion had been applied unnecessarily, as he could not conceive a journey occupying so much time being made for less money; but it was my claim to *any part of it* that he resisted; and he spoke of this compromise of half, as a favour, threatening, that if I did not accede, he would commence an action in the courts of law for the whole. I was, myself, prepared to do any thing that was just, but my friends wished me to do that which was most prudent. Mr. Erskine and Mr. Wedderburn were both of opinion, that though I had right on my side, yet, if I made it a matter of law, I might in its uncertainty be cast in damages and costs; and even if I got off, that expenses might fall on me as heavy as the £200 demanded. I was, therefore, advised to consent, and accordingly I gave to Mr. Briggs three promissory notes, one for £50 at six months, one for £50 at twelve months, and one for £100 to be paid on the publication of my 'Travels in Palestine'; for, he said, as my observations on that country could not have been made, had it not been for my mission for his house, it was right they should participate in the profits! He then gave me a letter, of which I enclose a copy, absolving me from all claims on the part of his establishment. The two £50 notes I have paid off since I have been in Calcutta, the £100 note is lodged with Messrs. Remington and Crawford, in Bombay; and will be paid when the book is out."

"The acknowledgment of Mr. Briggs, also referred to in the foregoing, is still in my possession. The promissory notes there enumerated have all now been paid. The following is a copy of the letter:—

*To Mr. J. S. Buckingham, Bombay.*

"Sir,—In consequence of your engaging to pay the sum of two hundred pounds sterling, to the order of my house at Alexandria, under the firm of Briggs and Co., viz.

£50—at six months from this date;
50—at twelve months ditto;
100—on the day of the publication of your Travels through Palestine, &c., for which you have given me three promissory notes in duplicate, I do hereby declare that on payment of the same, all claims of my house on you will be discharged, and the present shall be considered a final settlement.

£200

"I am, Sir, your very obedient Servant,

"For Briggs and Co.

"S. Briggs."

"*Bombay*, 18*th March*, 1818."

(31) Mr. Buckingham has *always* denied this, in the sense in which Mr. Bankes represents it.

(32) If one man introduced himself to another, what possible evidence *could* he produce, but that of himself or that of the person to whom he had thus made himself known? Mr. Gurney knows that neither Mr. Buckingham's nor Mr. Bankes's evidence would be received, as they are both principals in this case, and could not be admitted as witnesses. It is a mere quibble, therefore, to say the least of it, to represent the absence of evidence on this point as material.

(33) It is hoped the reader will bear in mind this solemn assertion: that he may determine hereafter, whether Mr. Gurney must not have *known*, while he was uttering it, that he must fail to redeem his pledge in every important feature of the case.

come into a court of law in an action of libel against a man for having written him a sealed letter, and given a copy of that letter, which, upon the evidence, was never seen by any person except Mr. Hobhouse and Mr. John Palmer; and call upon a jury to infer, that, by this letter, Mr. Bankes meditated the ruin of Mr. Buckingham, and to injure the sale of the work intended for publication (34). The plaintiff would also have you infer, that in consequence of this letter a publisher had declined to publish the work (35): but you have this day, Gentlemen, heard the evidence of Mr. Murray, who says, that he declined the work, not in consequence of any thing that Mr. Bankes had either said or written, but in consequence of a letter received from Mr. Gifford, to whose perusal the work was submitted; and even then the publication was not declined; but the manuscript was returned to Mr. Buckingham's friends, in order that they, by some alterations, might obviate Mr. Gifford's objections (36).

When Mr. Bankes was at Jerusalem, he meditated a journey into the country beyond the Jordan—a journey which he accomplished only by the assistance of Arab guides; and there was one guide perfectly competent to the task, but he refused to accompany Mr. Bankes, except upon one condition, namely, that Mr. Bankes would procure the release of his son, who was at that time in prison in Jerusalem. So anxious was Mr. Bankes to go the journey, that he actually procured, by means of a present to the governor of Jerusalem, the release of the young Arab, and made the necessary preparations for the journey before the arrival of Mr. Buckingham at Jerusalem. Upon Mr. Buckingham's arrival at Jerusalem, he made application to Mr. Bankes's servant to deliver a letter of introduction to his master, and the servant did so. At first, Mr. Bankes was unwilling to associate with Mr. Buckingham; but Mr. Buckingham, resolved to effect the object that he had in view, stated that he was on terms of the closest intimacy with some of Mr. Bankes's friends, and applied to Mr. Bankes for permission to accompany him on his intended journey. Mr. Bankes at first peremptorily refused. Mr. Buckingham applied again and again, and Mr. Bankes said "No" again and again. Mr. Buckingham was still urgent; he said to Mr. Bankes, "If you will allow me to accompany you, I will act as your servant; I will take notes for you." In short, Gentlemen, he expressed himself willing to make himself useful in any way Mr. Bankes might require his services, provided permission were given to him to accompany Mr. Bankes on the journey. (37) Mr. Bankes, thus *solicited* by Mr Buckingham, complied with his request, upon the express condition that Mr. Buckingham would take notes, which, when taken, were to be the property of Mr. Bankes: Mr. Buckingham said certainly, as he was very anxious to see that country. Upon those terms Mr. Buckingham accompanied Mr. Bankes. (37) They visited the ruins of Jerash, of which Mr. Bankes made a ground-plan from notes taken by Mr. Buckingham, by the dictation of Mr. Bankes. On their return to the Convent at Nazareth, I shall prove to you that Mr. Buckingham was seen by Mr. Bankes's servant tracing the ground-plan, and taking a copy of Mr. Bankes's notes, although the understanding, indeed the agreement, between him and Mr. Bankes was, that Mr. Buckingham was not to avail himself in any way of the notes thus taken; and when reference is made by Mr. Bankes to the ex-

(34) It has been already stated to how many persons it was shown, and how industriously its slanders were despatched over all Europe and Asia, to men of the most powerful influence and station.

(35) No such inference was ever attempted to be drawn, as it was known that it was the letter of Mr. Bankes's *father* which occasioned this; but this letter, as will have been already seen, was entirely founded on the letter received from Thebes, and written by his son.

(36) This is utterly untrue. The refusal to publish was unconditional; and the work was entirely withdrawn from Mr. Murray's hands.—See page 32—note.

(37) It is unnecessary to comment on all these mis-statements here, as they will be found to be completely refuted in the course of the proceedings, not only by the written evidence of Mr. Bankes himself contained in the libel, in which he states that he invited the plaintiff to accompany him, but also by the oath of both the very witnesses who were produced on his behalf.

penses of that journey having been defrayed by him, he does so merely for the purpose of proving the truth of his statement, that Mr. Buckingham and he were not travelling upon equal terms, and that Mr. Buckingham had undertook to perform some service for Mr. Bankes. They then parted: and when they again met at Damascus, some civilities passed between them, as it undoubtedly appears from Mr. Bankes's letters. No doubt that Mr. Buckingham, who is a man of some address and of specious manners, and who has acquired by his extensive intercourse with the world a considerable share of confidence, did ingratiate himself in the good graces of Mr. Bankes; no doubt that, at that time, Mr. Bankes supposed Mr. Buckingham to be (as he had represented himself) the intimate friend of Mr. Burckhardt, better known by the name of *Sheikh Ibrahim*, one of the most distinguished travellers of this or of any other country—a man upon whose honour and reputation an imputation had this day, for the first time, been cast—a man of the most unblemished character—and a man whose esteem was a passport to the confidence of every man who had the pleasure of being acquainted with him. (38)

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(38) Supposing this representation to have been really made, of which there is no proof whatever, it would have been strictly true; as at the very period of Mr. Buckingham's leaving Alexandria for Syria, in December 1815, he continued to receive the most friendly letters from Mr. Burckhardt, and he did not know of any change in this person's mind towards himself, until the beginning of the year 1817, when in India, and more than twelve months after his being with Mr. Bankes at Jerusalem. The following is the account of this affair, which appeared in the 'Calcutta Journal,' of December 22, 1822, and was repeated in the Appendix to 'Travels among the Arab Tribes,' at page 653, having been, like all the other matters in that work, in Mr. Gurney's hands for these two years past:—

"My next meeting with Mr. Burckhardt was at Cairo, on my return from India, in December 1815. Of that interview Mr. Babington was a witness; and he has already testified to the warm sentiments of regard and esteem which Mr. Burckhardt professed for me during his stay with him at Cairo, after my business had compelled me to quit that place for Alexandria. If any thing were wanting to confirm this continuance of his professed regard, it may be found in an extract of a letter written to me on the 3d of December, 1815, only the day preceding that of Mr. Babington's leaving Cairo, which, indeed, the letter itself mentions. In this letter Mr. Burckhardt says to me:—

"'Mr. Babington has just communicated to me the news of your speedy departure from 'Alexandria. Truly sorry as I am to forego the pleasure of seeing you again at Cairo, I still 'feel some satisfaction in thinking that I can evince at least my sincere desire of becoming of 'some service to you, in transmitting to you such local information on your intended land 'journey, as may help you to perform it with increased hopes of success.'

"The letter then points out the dangers of travelling in Syria, the disturbed state of the country rendering it indispensable to travel under the firman and protection of the several pashas, &c., and urges me again and again to consider whether I should not do better to offer my services to the pasha, than go on a message for people who would reward me but slightly, and who had none but the most self-interested motives in prevailing on me to undertake the journey they had projected for their own benefit. This letter closed with these words, referring to the doubts of my being well or sufficiently remunerated for my pains:—

"'Perhaps I go too far in my doubts; I most anxiously wish to be mistaken. Believe me, 'they arise in my anxiety about your welfare; and, above all, rest assured, that whatever you 'may determine upon, my warmest wishes for your ultimate success accompany you. It 'grieves me to part so soon again from you without having any reasonable hope of seeing you 'for many years. Do, therefore, remember me, for I shall ever be, with warmth and truth, 'my dear Buckingham, very sincerely yours,' &c.

"All the history of Mr. Burckhardt's conduct after this has been detailed in Mr. Babington's reply to the celebrated 'paper' (some extracts of which have already been given). When this paper was first written, or first circulated, I have no accurate knowledge; but, at the most, it must have been within two, or say even three, months after the date of his letter to me of December 3, 1815, and after his parting with Mr. Babington. I regret exceedingly that I have not a copy of the paper itself, that it might be printed at full length, dreadful as some portions of the language and accusations are; but the substance of it is sufficiently known. The calm and circumstantial reply of Mr. Babington to this paper, and after he had seen the last rejoinder also, is, however, so important to the case, that I hope I shall be forgiven for introducing it at length in the course of this defence, to render the whole complete. I shall give it, therefore, a place in a subsequent page.

"The only reasons that I have ever yet heard alleged for this change in Mr. Burckhardt's mind, from the extreme of enthusiastic regard and admiration, to the extreme of hatred and detestation, are these:—1st. That, having seen and compared all my different letters to different individuals in Egypt from Syria, he was of opinion that I was not pursuing my journey

Mr. Buckingham did, Gentlemen, represent himself to be the intimate friend of this excellent man, and he thus acquired the confidence of Mr. Bankes. They then parted, Mr. Buckingham to pursue his journey to India, and Mr. Bankes to encounter fresh perils in the prosecution of the objects of his laudable ambition. (39)

Three years after their last parting, Mr. Bankes, whilst visiting the ruins of Thebes, received a Calcutta newspaper, containing an advertisement, announcing that a work, entitled 'Travels in Palestine, by James S. Buckingham,' and promising, that in the work would appear thirty engravings of various places in the Holy Land, with a portrait of the author in the Turkish costume, and that among those engravings would be a plan of the ruins of Jerash. Mr. Bankes, you will remember, Gentlemen, was then in a remote part of the world, still exposing his life to new perils in the ardent pursuit of his laudable ambition, to illustrate the manners and customs of countries

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as I ought to do, and was thereby injuring Messrs. Briggs and Co. 2dly. That in those letters he discovered that I had spoken to Briggs and Co. of my being advised by friends (meaning himself), before I set out on this journey, not to undertake it; and that this was a breach of confidence which was unjustifiable on my part.

"Now supposing it, for the sake of argument, to be quite true, that I had delayed my journey unnecessarily, and travelled on Briggs and Co.'s money; and that I had even *named* him to them as the friend who had advised me not to undertake the task; surely these new facts could not affect what passed between us on the Nile two years before, nor what happened at Jedda, one year before. This discovery could not make my conduct to my family in England at all different from what it really was: it could not change me from a man 'whose character and acquirements were calculated to inspire admiration and esteem,' into 'a brute, a scoundrel, and a fool;' nor could it make my purposes, which were before 'noble, honourable, and virtuous, because sanctified by love and duty,'—all at once 'the fraudulent arts of a cunning yet awkward impostor.' Yet these were the changes in Mr. Burckhardt's expressions, within three months, at the farthest, after his last friendly letter, and his parting from Mr. Babington; and all that until this had appeared to him noble and good, was changed, as if by magic, into execrable and devilish, from the period of our first meeting up to his imprudent citation of Mr. Babington as an authority for assertions which he afterwards most solemnly denied!

"But the aggravation of Mr. Burckhardt's conduct is the greater, from the circumstance that slight, trivial, and inadequate as the *alleged* causes were, they were NOT TRUE. I have shown how I had discharged the trust of Briggs and Co. as one of the assigned causes of his anger; and with regard to the pretended breach of confidence, it was simply this:—Mr. Burckhardt had urged me most strongly not to undertake the journey, as he did not believe I should be adequately rewarded; and, in doing this, he made no injunction of secrecy whatever. On Mr. Lee's writing to me in Syria as to the deviation from the straight line which I appeared to him to have made, and reproaching me with what to him appeared unnecessary delay, I defended my conduct by showing the necessity that had occasioned it; and in reply to his angry reproaches, said, I regretted having had any thing to do with it, though, having begun, I should now go on; adding, 'There were not wanting friends who advised my not undertaking this journey, and who recommended the offer of my services to the pasha.' If it were a breach of confidence in me to say this, it was a greater breach of confidence to show my letters to the person to whom it applied, for the purpose, perhaps, of asking him whether he did not think *he* was the person alluded to, and thus exciting his anger. Mr. Burckhardt having given me this advice, without any restraint as to its use, I should have been fairly justified even in mentioning him by name as the person who had so advised me; but why any man should give another advice on so important a matter, and hate him afterwards for making it known, even without mentioning his name, is to me quite inexplicable.

"For myself, I firmly believe Mr. Burckhardt's enmity to me to have arisen from other causes. If I had gone by the sea-coast to Aleppo, I should not have trodden any new ground, nor have trenched at all on provinces of which he was, till that period, the only person who had any information. The change of route drove me into a portion of the country of which he knew I should bring away ample accounts, though travelling in haste, from my known industry, method, and indefatigable habits: he knew also, that, if I ever published, I should make a better book than himself, and not only forestall, but probably also eclipse, his account of those unvisited regions. I believe that he would have done any thing to have damned my reputation, as the best mode of defeating this, just as Mr. Bankes threatened to do, unless I gave up to him materials of my own, so as to give him also a monopoly of what Mr. Burckhardt equally desired for himself; and of which the one, Mr. Bankes, has yet published nothing, after years of leisure and health for preparation; and the other, Mr. Burckhardt, has furnished materials for a book, which the 'Literary Gazette,' a review rather favourable to his productions than otherwise, says, is 'neither calculated to instruct the few, nor entertain the many.'"

(30) The *perils* of Mr. Buckingham's subsequent route through Mesopotamia, were as much greater than any Mr. Bankes could have to encounter in Syria and Egypt, as his dangers in this latter country were greater than those of travelling in England.

which were endeared to his early recollections; and he, upon seeing this prospectus of a work, a portion of which could only be produced by Mr. Buckingham from his having availed himself of materials to which he had obtained access upon condition that he would not apply them to his own use, naturally felt indignant (as any man under similar circumstances must have felt) that by such a gross breach of confidence he should be deprived of a portion of that fame,(39½) for which he had quitted the comforts of his home, had given up the pleasures of youth, and had exposed himself to innumerable perils in a foreign land; and in a moment of indignation (40) he did write the letter which is the subject of this action. I admit, Gentlemen, that no feeling of indignation can justify a falsehood; but I am instructed to state, that there is not in this letter *a single word* that is not *perfectly true!* (41)

My Learned Friend, Mr. Brougham, says, that Mr. Buckingham paid a second visit to Jerash; and the only proof my Learned Friend has offered in support of his statement is, that Mr. Buckingham says, in his printed book, that the plan of Jerash originally taken was corrected by observations made upon two subsequent visits to the spot. Now, Gentlemen, that is Mr. Buckingham's statement. Mr. Bankes's statement is, that the plan published by Mr. Buckingham was taken (in violation of a contract between him and Mr. Buckingham) from the plan made by him when Mr. Buckingham accompanied him, upon the conditions which I have already mentioned.(42) So far, then, we have statement against statement. The first observation which I must make upon this second visit to Jerash is this: throughout the whole of this journey the notes taken are committed to writing, in the language of a journal; but there is not, throughout the book, one single note of any observation made by Mr. Buckingham on his second visit to Jerash. Now, I ask you, Gentlemen, looking at the language and the form of the observations (which are classed under the date of the day on which they were made) in this work, can you believe, that if Mr. Buckingham had visited Jerash a second time, he would not have given some date, and a note stating that he had been there a second time, and had made observations by which he had been enabled to correct the errors in the first plan. If I had no other reason but this silence on the part of Mr. Buckingham, I should not hesitate in saying at once, that it was sufficiently conclusive to my mind that he had never been to Jerash a second time. Mr. Buckingham has omitted to make any note of his second visit; and is it to be believed that he who represents himself as, and who I believe is, an accurate and copious note-taker, (42½) would have omitted to notice this second visit for any reason other than this —that he never *did* go there a second time? (43)

But independently of this silence on the part of Mr. Buckingham, I have the means of showing, in a way that he little apprehends, that he never did pay a

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(39½) What fame had or has Mr. Bankes even yet acquired by his labours?

(40) If "a moment of indignation" could form an excuse for the original letter written from Thebes, it must have been a long fit of anger to last a man from thence all the way to Trieste, at the head of the Adriatic, from which, upwards of six months afterwards, he sent this copy, for the purpose of publishing Mr. Buckingham as a villain to the world, by the hands of Mr. Hobhouse. It was for this cool and deliberate libel, and not for the letter written in a moment of indignation, that the present action was brought.

(41) The reader will see by the evidence, that there is not a *single word* of this solemn assertion of Mr. Gurney's entitled to belief.

(42) The plan was taken openly, and was known to Mr. Bankes to be so taken: there could, therefore, be no violation of compact. Besides which, it was Mr. Buckingham's plan as much as it was Mr. Bankes's.

(42½) This is a great admission from the party who charges Mr. Buckingham with ignorance and incapacity.

(43) The explanation of this was as familiar to Mr. Gurney, at the very time he was pretending ignorance of it, as it will, no doubt, be convincing to the reader when repeated here. The following short reference to this subject, is from the 'Calcutta Journal' of December 22, 1822, and Appendix to 'Travels among the Arab Tribes,' page 639, 640:—

"It was asserted that 'Mr. Buckingham had never been a third time to Gerash, and that no traces of such third visit were to be found in his book.' Both these charges were rebutted: the first by the living evidence of a gentleman in Calcutta, who had seen and conversed with

second visit to Jerash; my Learned Friend has called before you Mr. Arrowsmith, a gentleman whose abilities I have no wish to under-rate, and who has told you, that, in the engraved plan, there are many alterations made, which are not in the ground-plan traced by Mr. Buckingham at the window of the

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the guide who accompanied me there alone*; and the second, by a reference to the preface of the book itself, where the third visit was distinctly mentioned. Both these points were also abandoned, like all the former ones, as unattainable, and accordingly given up."

It may be added, that the journal printed in the 'Travels in Palestine,' is given in the form of a diary: that the first and second visit, which, being on two successive days, may be considered as the first visit only, made by Mr. Bankes and Mr. Buckingham in company, were on the 31st of January and 1st of February 1816. The latest date in the 'Travels in Palestine,' is the 18th of February 1816. The third visit to Gerash, made by Mr. Buckingham alone, was on the 7th of March, 1816, seventeen days *after* the diary in the 'Travels in Palestine' closed; and therefore impossible, without a falsification of dates, to be given in that volume. In the subsequent 'Travels among the Arab Tribes,' however, which commences with the 20th of February, 1816, two days after the former volume closed, and where the diary is again resumed, will be found, at page 121, under the date of March 7, 1816, a detailed account of the *third* visit made to Gerash without Mr. Bankes, occupying twelve quarto pages, a concluding with the following paragraph:

'While our morning coffee was preparing, I ventured out with my compass and note-book, 'to take sets of bearings for the correction of the plan of the city, which I could now enjoy an 'opportunity of doing, without any interruption and with but little delay. Starting at daylight, 'I had hoped to have done all I wished by eight or nine o'clock, but one object led to another 'so that it was nearly noon before I completed the peregrinations of the principal quarters of the 'city. By incessant and unwearied assiduity, during this period, I was enabled to sketch the 'ground-plans of four new edifices, take seven separate sets of bearings from different buildings 'by compass, and copy some Greek inscriptions from an altar, a column, and the frieze of as 'temple, making besides upwards of ten closely-written pages of notes, on the several portions 'that struck me as worthy of remarking on as I went along.

"The whole of this, which formed a far greater body of materials respecting Gerash, than 'Mr. Bankes and myself had been able to collect during our first hasty and interrupted visit, 'I thought it advisable to incorporate in the account given of the ruins of that city, in the ''Travels in Palestine,' already before the public, in order to make it as complete as possible, 'and to gratify, as well as I could, without delay, the curiosity of all who desired to know what-'ever could be communicated, respecting these recently discovered and highly interesting re-'mains. Instead, therefore, of repeating, in this place, the portion of information collected on 'this third visit to Gerash, I must refer the reader to the comprehensive general account of its 'ruins, contained in the 'Travels in Palestine,' already referred to; where it occupies about 'sixty pages, accompanied by a ground-plan of the city, and many of its separate edifices, 'drawn entirely from the notes, bearings, and measurements, taken by myself on this last occa-'sion."

How Mr. Gurney, to whom all this was distinctly known, because the book in which the whole is contained was in his hand, with marks, and leaves turned down, and constantly referred to by him, both during his speech and while examining the witnesses in court, could say that no evidence existed of Mr. Buckingham being at Jerash a second or third time, it is not easy to explain. The original manuscript notes of Mr. Buckingham, identified by Dr. Babington as those seen and read by him on Jerash at Madras, in 1818, a year before Mr. Bankes's libel-

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* "The following is a copy of the note in question, the original of which may be seen at my house, by any one desiring it.

'*Half-past* 4, *Wednesday afternoon, Nov.* 20, 1822.

'DEAR BUCKINGHAM,—I have this moment received your note, and will be happy to 'give such confirmation as lies in my power, to your having paid a visit to the ruins of Gerash 'subsequent to those made in company with Mr. Bankes.

'The son of your guide, who was a Christian Arab at Nazareth, showed me a written cha-'racter which you had given his father at Damascus, after having performed the journey across 'the Jordan alone; and my recollection serves me perfectly in your describing in that docu-'ment the safety of the route from Nazareth to Damascus, by the way of Gerash, when you 'passed as a single traveller. I afterwards met your guide at Aleppo, who often adverted to the 'same journey, and you may make any reference you please regarding the authenticity of this 'statement, to Your's, very faithfully,

'R—— W——.'

"(The writer of this letter, and the hand-writing, are known, among others, to Messrs. Colvin and Co. of this city, so that there can be no difficulty in proving its authenticity.)

"It may now be added, that the writer was Mr. Robert Wilson, a gentleman who had himself made extensive travels in Asia, and who is now the private secretary of the Marquis of Hastings, at Malta.—1824."

convent at Nazareth; I admit that there are, in the published plan, deviations from the plan originally taken by Mr. Bankes, and all those deviations which Mr. Buckingham would have you to believe are the result of his observations upon a second visit to Jerash, are the result of invention and falsehood. (44) Mr. Buckingham is little aware that Mr. Bankes has visited Jerash at a subsequent period; (45) but I shall show you that Mr. Bankes, accompanied by the Honourable Captain Irby and Captain Mangles, subsequently visited Jerash, that they spent five whole days among the ruins, of which they took a most accurate survey. I shall satisfy you, Gentlemen, by the most respectable testimony, that, although in the printed plan, there are many deviations from the plan originally taken by Mr. Bankes; there is not one of them which is not founded on invention and falsehood. (46) In part of the printed plan there are two rows of columns, but I shall prove to you, by five respectable gentlemen, that, in the place so represented, there are no columns at all. (47) First, as to the outline of the plans, I have now before me three plans; Mr. Bankes's plan, Mr. Buckingham's printed plan, and the genuine plan. The plan originally made by Mr. Bankes is, I am free to admit, full of errors, as it must necessarily be, from having been taken in a hurry, and the distances not laid down from actual admeasurement. In the first place, the walls in Mr. Bankes's plan are not angular; in the genuine plan they are all angular; Mr Bankes's plan represents two towers on a part of the walls, where there are no towers, whilst on other parts of the walls, which, upon an accurate examination, proved to be studded with towers, there are none represented in Mr Bankes's plan. Both those omissions are carefully preserved in the plan made by Mr. Buckingham, after having made accurate observations on his second visit. (48) This is the gentleman who promises to furnish vignettes, to correct the errors of others who had visited the East. (49) In another part of Mr. Buckingham's plan, there is a place marked "Head of Fountain," but there is no such thing. I shall prove to you that it is an aqueduct. (50) Another place marked "Military Guard-house," is merely an angle of the walls. I beg to ask you, Gentlemen, whether those coincidences between the published plan, and the plan originally taken by Mr. Bankes, do not confirm the opinion expressed at the moment by Mr. Bankes, that Mr. Buckingham was availing himself of a violation of his compact, and that he was intruding upon his property, in giving to the public original draw-

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lous letter was written, or any charge of plagiarism was even suggested, were tendered in evidence *of this* third visit, and the ample notes made on it; but they were rejected, on the ground that this was evidence produced by an individual in favour of himself, and could not, therefore, be legally accepted! There was enough, however, without *this*, to satisfy all who heard it of the truth of the visit having been made.

(44) Mr. Gurney knew to the contrary when he said *this*, as the subsequent evidence will show.

(45) If Mr. Buckingham read as little, or to as little purpose, as the learned counsel, or if he had so convenient a lapse of memory, he might not have remembered this: but Mr. Bankes himself proclaimed it, and reiterated it again and again in his slanderous article in the 'Quarterly Review,' five years ago. So that not only was Mr. Buckingham, but all the reading portion of the public also, *well aware* of this, which Mr. Gurney affects to disclose as an important fact, now for the first time known through him to the world!

(46) But the jury were not so satisfied, nevertheless.

(47) It was afterwards admitted that there *were* columns, though not in exactly the same position.

(48) It was nowhere pretended that either of these plans were PERFECT; but that Mr. Buckingham's was more accurate than Mr. Bankes's; though, of course, five gentlemen, each employed for five successive days, might well hope to collect more materials for a plan of a ruin, than one unassisted individual in as many hours!

(49) No such pretence is anywhere made.

(50) This is an error of the learned counsel. It was a bridge that was mistaken for an aqueduct; though the head of a fountain and an aqueduct might be very likely to be near each other.

ings taken on the spot—drawings which he had not the means—not the ability to make, as Mr. Bankes well knew.

My Learned Friend, Mr. Brougham, has, in order to prove to you the abilities of his client in making drawings, ventured to ask one of the witnesses respecting that fact; but you must remember, Gentlemen, that the answer of that witness was, that he had seen Mr. Buckingham make a drawing of a headland,—a conclusive proof, it must be owned, of his ability to lay before the public original drawings of cities taken upon the spot. (51) I admit, Gentlemen, that Mr. Buckingham did send with his manuscript to England some engravings and drawings, and, here, I must give you a specimen of the art of book-making. But what do those engravings consist of? They are some (indeed all, with the exception of these) of 'Meyer's Views of Palestine,' published several years back. (52) When Mr. Buckingham sent those engravings to England, he was afraid that they would be recognized as French engravings, which had been many years published, and he accordingly wrote marginal notes, directing that, in the engravings to be published in his work, some figures which were in the original engravings should be omitted, and others substituted in their place, and that certain alterations should be made in the costume of the figures; thus endeavouring to conceal the plagiarism, and to pass off those engravings as his own. (53) Mr. Buckingham expected that, by adopting this disguise, it would be impossible for any person to recognize the children, who had been dropped,—first, as to the engraving of the Tomb of Absalom, Mr. Buckingham, in a marginal note, directs that for the two Turkish figures on the right, in the original engraving, there should be, in the new engraving, two figures in European costume on the left, "one sitting on a rock, and writing in a note book, and the other holding an ink-horn in his hand." Then, as to the engraving of the Ruins of the Aqueduct of Tyre, Mr. Buckingham directs that the "figures on the right be entirely omitted." Gentlemen, it is unnecessary for me to go into all the alterations directed to be made by the marginal notes in the hand-writing of the plaintiff, because the engravings will be put into your hands, and then, I feel convinced, that you will agree with me, that Mr. Buckingham's object in making those alterations was to practise a *fraud* upon the public. (54)

Mr. Brougham.—I suppose you will give up the engravings? They are Mr. Buckingham's property. (55)

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(51) The capacity to draw headlands and sketches of coasts, which all navigators almost necessarily possess, is quite sufficient to enable an individual to take outline sketches of scenes on shore, in such a manner as to enable *others* to make from them more finished drawings; and Mr. Buckingham never pretended to be competent to more than this. But the question here at issue, was not about original *drawings*, but about a ground-plan of the walls, streets, and edifices of a ruined city, in the delineation of which nothing was required beyond the capacity to draw straight lines with a common pen and ink! a great and rare accomplishment, it must be admitted!

(52) They were at that time not even published at all, but as new to the world as any original drawings whatever.

(53) This is utterly and gratuitously false, as will be seen hereafter; there being not only no intention to disguise, but a clear and distinct acknowledgment given, of the source from whence they were adopted, and even praise bestowed on the artist, whom, it is here so shamefully pretended, it was Mr. Buckingham's intention to despoil of his labours!

(54) The whole of this is as absurd as it is wicked. No leaving out of mere figures, or alterations of costume, *could* disguise a picture, if all other parts remained the same; and it is not pretended that any alteration, except in the figures, was directed to be made; the reason of which was, that the figures were not only no necessary part of the picture (being, no doubt, all put in by the artist after his views were complete), but that there were many of them inaccurately placed; and so numerous as to make the re-engraving of the plate containing the whole, at least twice as costly as its execution without them, while their absence would not affect either the fidelity or beauty of the view in the slightest degree.

(55) The secret and clandestine manner in which these engravings had been obtained, by a breach of confidence on the one part, and a most discreditable eagerness to profit by such breach of confidence on the other, will be fully exposed hereafter.

Mr. GURNEY.—He is very welcome to them; but the Jury must first see them as a specimen of the work, with a view to injure which the plaintiff complains that the defendant wrote this letter. My Learned Friend, Mr. Brougham says, "If Mr. Buckingham has copied the notes of Mr. Bankes, and inserted them in his work, my Learned Friend, Mr. Gurney, will be able to show you, Gentlemen, that, page after page, those notes appear in Mr. Buckingham's work." Gentlemen, my Learned Friend, knew very well, and you must know, that it would be impossible to do so; and for this reason, that those gentlemen were travelling in a country where the taking of notes was a work of considerable peril; and it is not, therefore, probable that very copious notes would be made on the spot; but, we all know, that a gentleman may, on his return home, expand notes occupying not more than two lines into half a page. Gentlemen, it is, therefore, absurd to expect that Mr. Bankes should be able to show you a literal copy of the notes in Mr. Buckingham's work; but, I say, Gentlemen, that, in a case like the present, if it should be found that the *style* of Mr. Buckingham's notes corresponds with the *style* of the notes taken by Mr. Bankes, that will be sufficient to convince you of the truth of the charge preferred by Mr. Bankes against Mr. Buckingham in this letter. (56)

Gentlemen, if Mr. Bankes had considered the question between him and Mr. Buckingham as one of a pecuniary nature, he, undoubtedly, would not have defended this action, and incurred the immense expense of bringing from distant parts of the globe the witnesses necessary for his justification; (57) and, no doubt, when Mr. Buckingham brought this action, he took it for granted that Mr. Bankes would not have gone to that expense; but Mr. Bankes, wishing to appear before you as a gentleman, has incurred that expense, and I shall this day produce before you the servant who accompanied Mr. Bankes in all his travels, and also the Albanian soldier who accompanied him on the journey to Jerash. When my Learned Friend, Mr. Brougham, speaks of delay, I must beg leave to remind him, that for that delay no blame can attach to Mr. Bankes.

Mr. BROUGHAM.—You would not admit the publication of the libel.

Mr. GURNEY.—Because we wanted to know what sort of publication it was. We did not think that any publication could be *proved*. (57½) Mr. Bankes has been always anxious to have the matter fully and fairly investigated; (58) but not so was Mr. Buckingham, for, when we applied for time to bring the witnesses to this country, it was said, on the other side, that it was of no use to grant the time required by the defendant, because the Albanian soldier was of such an advanced age that he would never reach this country. (59) Gentlemen, I shall put this *old* man into the witness-box, and so far from his being of an extreme age, you will find that, in appearance at least, he is not more than thirty-five years of age or thereabouts. I shall produce Antonio da Costa, the servant who accompanied Mr. Bankes in his travels, and who will prove to you the nature of the contract entered into between Mr. Bankes and Mr. Buckingham before they left Jerusalem, on their journey beyond the Jordan. The expense of the outfit necessary for the journey was certainly great; but, I am ready to admit, that the *actual expenses* of the journey to Jerash were trifling; and Mr. Bankes, in mentioning

(56) If this could have been shown, it might have proved something; but not a line, nor an expression, nor even a similarity of style was *attempted* to be shown by evidence; for the best reason in the world, because it was impossible.

(57) The great burthen of whose expenses has been already paid by Mr. Buckingham! At the suggestion of Mr. Bankes, whose attornies have been more than ordinarily eager in endeavouring to obtain the expenses from Mr. Buckingham, even beyond the extent allowed and directed by the Court.

[57½] Mr. Bankes must have known otherwise.

(58) This is impossible; because all that was necessary to this full investigation, was to admit the publication of the letter, and go at once to trial on the truth or falsehood of its contents, which might have been done two years ago; but Mr. Bankes would *not* admit what has since been proved, and from this alone has all the subsequent delay arisen.

(59) No such assertion was ever made.

those expenses, had no other object but to show that the journey was his own.

My Learned Friend, Mr. Brougham, says, that Mr. Buckingham paid half of the expense of the journey to Jerash: I shall show you, Gentlemen, that, if Mr. Buckingham were disposed to do so, he had not the means in his power! How do I intend to prove that? I shall prove it by showing, that at Jerusalem Mr. Buckingham applied to Mr. Bankes's servant for a loan of ten dollars; that the servant refused to afford him that accommodation at first, and that he afterwards gave him the money by the order of Mr. Bankes. (59½) I think, I shall show you, Gentlemen, that *every allegation in this letter is well founded;* I shall show you, that the journey was Mr. Bankes's; that Mr. Buckingham *admitted* the terms upon which it had been agreed he should accompany Mr. Bankes; and I shall also show you, that Mr. Buckingham *admitted* he had not money sufficient to carry him through the Desert; and that he went from one place to another, introducing himself as the friend of Mr. Burckhardt! (60) Mr. Bankes has stated, in this letter, that it was not correct in Mr. Buckingham to puff himself off as the friend of Mr. Burckhardt, because Mr. Buckingham knew at the time, that whatever opinion Mr. Burckhardt might at one time have entertained respecting Mr. Buckingham, that opinion had, long before the time of which I speak, been changed, and that change of opinion had been openly expressed to every one of Mr. Burckhardt's acquaintances. (61)

When, therefore, Mr. Bankes saw, that in this advertisement Mr. Buckingham described himself as the friend of Mr. Burckhardt, (62) no doubt with the view of increasing the sale of his Work among those who had the pleasure of

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(59½) This is altogether untrue; but its impossibility is manifest on the face of it: for if Mr. Buckingham was so destitute then as to be unable to pay his portion of these "trifling expenses" of a journey of seven days, or to raise ten dollars without borrowing it from Mr. Bankes's servant, how could he afterwards defray his expenses of a journey over-land to India, occupying as many months, and costing nearly £400 sterling, which no one denies that he *did* perform, or that this sum was expended on it?

(60) No such admissions were ever made; on the contrary, these assumptions have always been denied; and not one tittle of evidence was produced to support this charge.

(61) This is also untrue. Mr. Burckhardt's most friendly letter, already quoted, was written in December 1815. Mr. Buckingham and Mr. Bankes met together at Jerusalem in January 1816, only a month afterwards; and Mr. Buckingham knew nothing of the change in Mr. Burckhardt's mind till the March 1817, more than twelve months after his parting with Mr. Bankes in Syria. All this is clearly and distinctly proved in the Appendix to 'Travels among the Arab Tribes,' so long in Mr. Gurney's hands, and used by him for reference in court, while he was uttering the very speech now before the reader; but it was not convenient for him to remember it.

(62) Even this is also untrue. It was in March 1817, that Mr. Buckingham, being then in India, first knew of Mr. Burckhardt's change of opinion towards him; after which, believing him to have been misled by others, and still capable of being reclaimed from his error, he wrote him a friendly letter of explanation and remonstrance, dated Bombay, March 30, 1817 (an entire copy of which will be found in the Appendix so often referred to, at p. 654); to which he, about a year afterwards, about March 1818, received an answer, adding insult to injury. In June 1818, Mr. Buckingham arrived in Calcutta; and in October of the same year published the advertisement or prospectus of his 'Travels in Palestine,' in which the name of Mr. Burckhardt is thus introduced:—"I met my *former* friend, Mr. Burckhardt, a third time at Cairo, on the point of setting out, as we then thought, for the interior of Africa. My stay in Egypt was very short, however, on this occasion." These are the exact words of the prospectus or advertisement held in Mr. Gurney's hand, and, at his suggestion, not read to the court, because it was an advertisement of four columns! There were better reasons than its length for not wishing to have it read; as this phrase, "*former* friend," would have shown clearly that it was not pretended to call Mr. Burckhardt a friend *at the moment of writing*, and with the knowledge that it was otherwise. If his name had been merely mentioned as a person met with in Egypt, there might be ground for imputing intentional concealment of any

knowing Mr. Burckhardt, (63) and who would show their respect for the memory of Mr. Burckhardt by assisting the man whom that excellent man had thought deserving of his friendship and esteem, Mr. Bankes thought himself bound to state to Mr. Buckingham, that of which Mr. Buckingham was at the time well aware---namely, the alteration of Mr. Burckhardt's opinion of Mr. Buckingham. I shall show you, Gentlemen, that what Mr. Bankes has stated about Mr. Burckhardt was not stated without sufficient proof. Mr. Burckhardt, who was a gentleman of the most unquestionable honour and integrity, so far from having concealed the alteration in his sentiments respecting Mr. Buckingham, has expressed it in more letters than one. (64) Gentlemen, I shall place in your hands three letters written by Mr. Burckhardt, which, I feel convinced, will satisfy you that Mr. Bankes's statement respecting Mr. Burckhardt's opinion is fully borne out. In one letter, dated "Cairo, 28th June 1816," (65) Mr. Burckhardt thus speaks of Mr. Buckingham: "As to Buckingham, he is a most barefaced impostor and swindler. I have left a letter stating this, and, if ever I should meet, I shall say as much to himself; and, therefore, have no objection to your saying that I have ceased to be his friend." In another letter, dated "Cairo, July 15, 1816," there is the following passage: "As to what regards my opinion of Buckingham, it remains unaltered: and his late proceedings in Syria to his employers have made him forfeit the least title to my esteem." In another letter from Burckhardt, dated "March 28, 1817," Mr. Buckingham is thus spoken of: "I have had no news from Syria for some time. Mr. Buckingham has gone from thence to Persia, having given a complete slip to his employers." Those extracts are, in my mind, sufficient to prove that what Mr. Bankes stated in his letter in this respect, had been written by Mr. Burckhardt, and publicly stated by him to every European whom he had met in the East.

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personal differences; but to call a man one's *former* friend is as clear an indication as could well be given of his not being at *present* entitled to that appellation; and this was its undisguised meaning.

(63) The book was advertised for sale in India, where subscriptions to it were alone invited, and where there was not a single individual in the whole country, as far as was then known, to whom even Mr. Burckhardt's *name* was familiar; as he had then neither written nor published any thing, and he was a stranger to India, and generally to Europe also.

(64) Whether Mr. Burckhardt was a person of honour and integrity may be best judged of from this fact, that, *at the very moment* when he confesses, in one of his slanderous letters, that he was endeavouring to get at the bottom of Mr. Babington's opinion of his fellow-traveller, Mr. Buckingham,—at the very moment when he was concocting materials for his subsequent calumnies, that is, in December 1815, he wrote (while Mr. Babington was in Cairo with him) the most friendly letters that could be penned to the very individual he was secretly suspecting, and seeking to justify his suspicions by extorting from Mr. Babington's confidential conversations what he afterwards wilfully and knowingly perverted to serve his malignant purpose. If, therefore, he did not conceal his hatred of Dr. Buckingham from others, he concealed it from Mr. Buckingham himself; and wrote him in the most enthusiastic terms of affection, while he was sharpening the dagger by which he was about to stab him to the heart!

(65) Let the dates be particularly observed. Mr. Bankes's assertion is, that Mr. Buckingham, in *January*, 1816, pretended to enjoy the friendship of Dr. Burckhardt, well knowing that, both *before* and *at* that time, Mr. Burckhardt had expressed for him his hatred and contempt. Mr. Buckingham proves by a letter dated December 1815, only one month before his meeting with Mr. Bankes, the accuracy of which is corroborated by Mr. Babington's testimony, that Mr. Burckhardt was *then*, professedly at least, his warmest and best friend. Three extracts of letters are now adduced by Mr. Gurney, one bearing date *June* 1816, another *July* 1816, and a third *March* 1817, respectively five, six, and fourteen months AFTER Mr. Buckingham's meeting with Mr. Bankes,—to prove that at *the time* of that meeting, *January* 1816, the friendship professed by Mr. Burckhardt did not exist! The very reason assigned for this change of opinion ("his *late* proceedings in Syria,") must be conceived strong proof that, on his first entering Syria, six months before this letter was written, the change had not taken place. These proceedings were, no doubt, unpleasant to Mr. Burckhardt, because they

With respect to that part of the letter which states that Mr. Bankes will make Mr. Buckingham's character as notorious in England as it was in Egypt and Syria, I shall prove to you that Mr. Buckingham's character was notorious in Egypt and Syria—I shall prove to you that his character in those countries was that of an impostor, who was going about the country introducing himself to several persons as the friend of Mr. Burckhardt. (66)

With respect to this question in a pecuniary point of consideration, I again repeat, that it would not be worth while to incur the expense of bringing witnesses from Syria; but Mr. Bankes, Gentlemen, does not take that view of the question. He stands here before you to verify, after a lapse of some years, what he has written in a distant country; and I appeal to you, Gentlemen, whether when a gentleman who, like my client, giving up all the comforts of his home and the pleasures of his youth, has spent his early years in traversing countries which have been for ages in a state of barbarism, with the laudable expectation of promoting the advancement of literature and science, his indignation was not pardonable, when he found that the plaintiff, who had accompanied him under the circumstances already mentioned, was about to avail himself of the information derived from that journey, and to lay it before the public as the result of his own important discoveries and observations (67)

With these observations, Gentlemen, I shall leave the case in your hands, fully satisfied that you will do ample justice between the parties.

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threw Mr. Buckingham on *his* holy ground, as he had already been thrown on Mr. Bankes's sacred territory; but Mr. Burckhardt, not satisfied with being angry at this, raked up all imaginable accusations as to matters of which he could have had no knowledge, to blacken the character of one who had dared to tread on the soil he had hallowed by his footsteps. All this would seem incredible to a person who had not had fatal experience of its truth; but it is, nevertheless, undeniable; and, as an appropriate, though melancholy termination to this conspiracy of learned men against the private character of an individual, of whose public labours they were jealous, came a writer in India, constantly asserted and generally believed to be a Presbyterian divine, who, when reiterating the calumnies of these Syrian travellers in the 'John Bull' of that country, under the assumed title of "A Friend to Mr. Bankes," avowed, that his principal reason for endeavouring to blacken Mr. Buckingham's moral character was, by undermining his reputation, to weaken the influence of those political doctrines, arguments, and principles, which he admitted *did* derive weight from the character of him who supported them, and to weaken the force of which was his only object in making that character as odious as he could do in the eyes of the world!* These are the men of "ancient family," of "splendid fortune," of "unquestionable honour and integrity"! and these the deeds by which they maintain their reputation!

(66) Whatever notoriety Mr. Buckingham's character might have obtained after he left those countries, was the sole work of those moral assassins, who could stab their victim behind his back, and proclaim him as infamous to the world, before they dared to show their aspersions to himself. But in no one instance whatever *did* he derive, or *could* he have derived, any benefit from being considered the friend of Mr. Burckhardt; nor was this ever urged as a passport to any man's favour or aid.

(67) Supposing this to be even true, the best revenge that could have been taken by Mr. Bankes upon his enemy would have been this:—He sees, in June 1819, an announcement of Mr. Buckingham's intention to publish a book of Travels, the prospectus of which extends over nearly twelve months in point of time, and all the way from Cairo in Egypt to Calcutta in Bengal, in point of space; seven days and about one hundred miles of which were passed and traversed in his company. What so easy as for him either to repair himself to England, to have applied to the Court of Chancery for an injunction to restrain Mr. Buckingham's publication, or have sent his materials there, without coming home himself, as Mr. Buckingham had done, publish *his* Travels also, and letting the world judge between himself and his supposed rival? Mr. Bankes had been travelling for as many *years* as Mr. Buckingham had passed days in his company; Mr. Buckingham had also been a voyager from his infancy. Could this little

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* See Appendix to 'Travels among the Arab Tribes,' p. 666, where this atrocious avowal will be found at full length.

## EVIDENCE FOR THE DEFENDANT.

At the desire of Mr. Gurney, the clerk read the directions on the margin of the plates given up by Mr. Murray to Mr. Bankes, in Mr. Buckingham's handwriting, already repeated in Mr. Gurney's speech, for the purpose of making them evidence. (67)

The LORD CHIEF JUSTICE (after looking at the two drawings).—If you compare these drawings with Myers's, it is quite clear that they are copied (68).

Mr. BROUGHAM.—Certainly, my Lord; we do not deny it.

The LORD CHIEF JUSTICE.—Are these drawings in the printed book?

Mr. GURNEY.—No, my Lord, Mr. Murray omitted to return them.

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speck of seven days, in the great map of life, mar and blot all that had ever before or since been imprinted on it? But Mr. Bankes not only did not do this—he has not even published a line of his Travels since, though eleven years have elapsed since Mr. Buckingham and he were at Jerusalem together,—though he has health, fortune, leisure, and, till lately, all the treasures of the University of Cambridge, several hundreds of its learned associates, and all the materials of the British Museum at his command; while Mr. Buckingham, as the world now well knows, has been in one constant sea of trouble, into which Mr. Bankes's calumnies were the first to plunge him, from that hour almost to the present. But his moral triumph has been achieved at last, though purchased at a price, in labour, agony, and bitterness of heart, which no man, who ever felt these pangs through seven long years of endurance, and could foresee their protracted misery, would consent to pay even for life, and all the pleasures that existence could yield to the most happy of created beings.

(67) To show the entire good faith observed in making even these slight alterations of figures merely, on the engravings in question, which had at the bottom of each on the one side the words "*Drawn* by Casas," and on the other, "*Engraved* for Buckingham's Travels in Palestine," the following additional notes, written on the margin of the plates in pencil, and *not* read in Court, because they did not so well suit Mr. Gurney's purpose, are here introduced:

"NOTES ON THE ENGRAVINGS.

"1. *View on the Coast between Tyre and Acre.*—The ships and vessels are very bad, and the running figures on foot also. Horsemen on the plain would be more characteristic, and should be introduced.

"2. *Mountain of Precipitation, near Nazareth.*—This is accurate, except the figures, which are all bad, and too full of motion. A groupe of three in the dresses of the country to be introduced near the cave.

"3. *View of Jerusalem, from the Mount of Olives.*—All this is exceedingly faithful, including even the figures.

"4. *Grotto of the Apostles, near Jerusalem.*—The figures here are all too stout, particularly about the arms and legs. The dress is accurate, except the sandals, which are rarely worn, and then come over the *foot* only, without going over the leg. The sword of the sitting figure is too large, as well as the ball of the pipe of the standing figure—all the rest is accurate.

"5. *Tomb of the Kings at Jerusalem.*—The two figures on the right are good: the one on the top too stout about the legs, as well as the descending figure. The sword is much too broad, is not curved enough, and is on the wrong side, and the sandals should be confined to the *feet* of both, and not be bound over the legs.

"6. *Tomb of Absalom.*—In the two figures on the right, the peaked bonnets in the centre of the turbans should be made flat. The two figures on the left should be omitted altogether.

"6. *Canaa of Galilee.*—Here every thing is characteristic, except the sandals, which are never worn as represented—the people here should be all bare-footed—and the little boy be omitted altogether: but all besides faithfully copied.

"7. *Interior of Jerusalem.*—The whole of this is accurate and unexceptionable, except the peaked tops of the turbans, which should be made flat."

(68) The two drawings from Myers's Views in Palestine were not given in the printed work at all; but they were never intended to be given as *originals*: they were the two out of thirty subjects for vignettes at the heads of chapters, retained by Mr. Murray, and acknowledged in the preface of the work; so that, if they *had* even been published, there was no profession of their being originals, either in the drawings themselves, or in the text of the Travels.

Mr. GURNEY directed the clerk to read the written deposition of Mr. Briggs, who had been, some months before, examined on interrogatories, as he was then about to leave England.

Mr. BROUGHAM.—We must first know whether Mr. Briggs is not here to be examined in person.

Mr. GURNEY.—We have the admission of your attorney that he is abroad.

The *Clerk* then read the admission of the plaintiff's attorney to the fact, that, on the 7th of January, 1825, Mr. Briggs was beyond the seas.

The LORD CHIEF JUSTICE.—That is sufficient. (70)

The *Clerk* then read the following depositions of Samuel Briggs, in answer to interrogatories:

"First, That he is a partner in the house of Briggs and Co., at Alexandria, in Egypt, and Briggs, Brothers, and Co., in London. Examinant's firms carry on business both in London and Alexandria, in Egypt, but have no connection with each other. The house in Egypt has been established twenty-two years, and that in London fifteen years."

Mr. PATTISON here requested that the answer to the fourth cross-interrogatory might be read, by which it would be seen that Mr. Briggs was not, himself, in Egypt at the time of the plaintiff's leaving that place, in December 1815; not having arrived there until more than two months afterwards, in 1816, and that, as, from this admission, it was clear he could have no knowledge of the facts, but such as he might have gathered by hearsay from others, his depositions could not be received as evidence.

"Fourth, That he hath resided in Egypt from the year 1802 to the year 1807, when he quitted the country, and returned in 1809; and quitted it again in the year 1810, and returned in 1816; went to Bombay in 1817, returned to Egypt in 1818; quitted Egypt in 1819, and has not returned there since. During some part of the above-mentioned period, he has passed some months at Cairo, and elsewhere, in Egypt."

It was admitted by the LORD CHIEF JUSTICE, that the transactions not being known to Mr. Briggs, but by hearsay sometime after the occurrence, his depositions to such knowledge could not be received in evidence. They were accordingly discontinued. (71)

*Antonio Da Costa examined by Mr. Parke.*

This witness was a Portuguese. He sometimes answered the questions which were put to him, in English, but more frequently required the assistance of an interpreter, who, however, did not appear to be very competent to the task which he undertook.

Were you in Mr. Bankes's service when he travelled in Syria?—Yes.

How long were you in his service?—Seven years and a half.

When did you first enter his service?—In Portugal in 1813.

Did you go with him into Egypt?—Yes.

And into Palestine?—Yes.

Were you with him at Jerusalem?—Yes.

Do you recollect where you first saw Mr. Buckingham?—In the convent at Jerusalem.

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(70) The admission that Mr. Briggs was beyond the seas was dated nearly two years ago, when the trial was expected to be brought on, and when he *was* actually on the Continent; but he had been in England almost ever since, and was served with a subpœna in London only a short period before the trial, when it was not convenient for him to attend; and a letter, dated on the 15th of October, and received by the solicitors through the twopenny post, stated him to be on some part of the Continent again. The benefit of his oral testimony was therefore lost to both parties.

(71) The other party had had abundant opportunity of availing themselves of Mr. Briggs's personal attendance, as he had avowed himself in these depositions to be a friend of Mr. Bankes, and to have had private and friendly communications with him by letter and otherwise. His non-appearance, therefore, could not be considered a benefit to the plaintiff.

Where was Mr. Bankes at that time?—On the Dead Sea.

Did Mr. Buckingham give you a letter for Mr. Bankes?—Yes.

What did he say when he gave it you?—He asked me to be so kind as to deliver it.

Did he say where he came from?—Yes.

Where was it?—From Nazareth.

Did he say that he had been in Egypt?—Yes.

Did he mention the name of any person with whom he was acquainted there?—He said that Sheikh Ibrahim had recommended him. (72)

Did he mention any other person?—No.

Did he not mention the name of Colonel Missett?—Yes. (73)

Did you deliver the letter to Mr. Bankes?—Yes.

What became of it?—Mr. Bankes read it, and then tore it to pieces. (74)

Had Mr. Bankes made preparations at that time for his journey to Jerash?—He had an Arab with him.

Had he then made a bargain with Mahomet Mehedy?—I do not know.

Did Mr. Bankes come to Jerusalem with Mahomet Mehedy?—Yes, from the Dead Sea.

Did Mr. Buckingham afterwards make application to Mr. Bankes in your presence?—Yes.

Where was that?—In Jerusalem.

What did he apply for?—For Mr. Bankes to let him go with him to Jerash?

What did Mr. Bankes say?—That he did not like company.

Did Mr. Buckingham again make application?—Yes, for two or three days before Mr. Bankes gave his answer. (75)

What did you hear Mr. Buckingham say—as to what capacity he would go in?—After some time, Mr. Bankes promised him that he should go, but said that he should not draw or write. Mr. Buckingham said he would not—that he wanted to go for pleasure, not to write. (76)

Did Mr. Bankes, before Mr. Buckingham made that promise, make it the condition of his allowing Mr. Buckingham to go with him?—Mr. Bankes put that condition upon it. (77)

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(72) The improbability of this will appear from the following simple fact, that the route originally marked out for Mr. Buckingham was to land at Beirout, and go from thence to Aleppo; and this being known to Mr. Burckhardt, his giving Mr. Buckingham a letter of introduction to Mr. Bankes at Jerusalem is as unlikely as that a person going to Dublin, on his way to the West Indies, should take letters of introduction to a friend in Edinburgh.

(73) This is a singular failure of memory, and as quick a recovery of it, especially as relating to two names so constantly associated in all that has been written and said on this subject.

(74) This, supposing it to be true, is, to say the least of it, no strong evidence of Mr. Bankes's courtesy; and especially when applied to the letter of a person he himself had *invited* to join him. But no such letter was ever written; and the "tearing it to pieces" is, therefore, wholly imaginary.

(75) Let it never be forgotten, that Mr. Bankes himself describes no such importunity, though his great object was to show Mr. Buckingham's obligations to him. He distinctly says in his libellous letter to Mr. Buckingham, "It was at *my invitation* that you went with me." His Portuguese servant states the direct contrary. Which of them is most worthy of credit?

(76) Mr. Bankes, on the contrary, says, that the express engagement entered into by Mr. Buckingham in this pretended compact was, that he *should* write, and keep the journal of the route, whenever he, Mr. Bankes, should wish it. The servant says he agreed neither to draw nor write. Which of these is likely to be most correct?

(77) The condition is in itself most improbable and absurd, even had it not been refuted by other evidence; but a person who could propose such a condition must be the greatest monopolist ever yet heard of: for such restrictions would go to prevent an individual from using those faculties of observation which no master denies to his servant, or even a West India planter to his slave. Besides which, to be of any use, the condition should be that the individual should not even *remember* what he saw, or ever mention it at any future time to others! As one of the imputations made by Mr. Bankes is, that Mr. Buckingham was utterly

Did the parties set out on the journey?—Yes.
Did you accompany them?—No.

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ignorant of the commonest points of architecture, and the declaration of Mr. Bankes's servant is, that Mr. Buckingham engaged not to write at all, this seems the proper place to introduce an entire copy of the longer letter of Mr. Bankes, preserved by the melting of the wax before described, which is full of architectural description and disquisition addressed to his "ignorant" fellow-traveller! and which contains a distinct acknowledgement of Mr. Bankes's having seen and read those very written notes, which Da Costa declares it was a condition that Mr. Buckingham should not make! The letter, and the remarks which follow it, were published originally in the 'Calcutta Journal' of 1822, and re-published in the Appendix to 'Travels among the Arab Tribes,' p. 643.

"*To J. S. Buckingham, Esq. to be forwarded, should he be on his way to Baalbeck.*

"*Damascus, April* 12, 1816.

"My Dear Sir,—Since I knew nothing of your illness until now, when I hope it is quite at an end, I can only rejoice in your recovery. At the same time, I am afraid that the same wintry weather which has distressed me very much in the Hauran, must have made your passage across the mountains very disagreeable, if not dangerous. I have to regret that my letter from Sunnymaine never reached you, as I there detailed to you my plans, and mentioned that I wished our meeting at Baalbeck to take place a few days later than that which we had fixed on together. None can be better than about the 10th or 20th. The intense cold, with storms of rain and snow, prevented my penetrating from Salkhud to Oerman, and even to Oomydgimel, which, in spite of all objections and difficulties, I was much set upon; however, in some directions, I have extended my researches considerably farther than you did. I visited El Koffor, which does not deserve its reputation; Hebrawn, where there is a temple; Shakkah, where there are some interesting early Christian antiquities, and a curious tower with inscriptions; Hayto, where there is one of the most unintelligible buildings in all the Hauran, that seems to have been, as I should conceive, a sort of college for priests, and some of the best specimens of private houses. Amrah is full of inscriptions, chiefly Christian.

"At ——* is a temple of the time of the Antonines. At Shaarele, in Ledja, I found little to interest me; there is a small Roman bath. At Medgdel is by far the most entire of all the temples. Its architecture is (like all the rest throughout that country, so far as I saw it) of a very bad sort, with high stilted pedestals, and loaded with unmeaning ornaments. But it is curious as a specimen, and full of Greek inscriptions. The prettiest temple in the Hauran to my mind is a little one that wants little else besides its roof, at Sunnymaine; it makes no figure upon the exterior. Some of the towers there also are very interesting, but less so than that at Medgdel, which you must have seen. Of private houses I saw several far superior to that at Ezra. I was carried into one at Bostra, where there are Ionic columns and pilasters all round the principal apartment, and a lesser one with a smooth ceiling and arched above within it. There is another excellent specimen in a ruined village called ——,* near the road from Shibley's village —— * to Bostra, with two or three stories, and several at Hayt. There is quite a mansion at Medgdel, with ornaments in all the angles of the ceilings, and the masonry all wrought smooth. There is a good one, too, at Nedjerawn. Did you observe the theatre at Soayda? It is pretty large, and much ruined, and faces towards the great church to the north. The temple there is Roman past all dispute, but of the worst times. I am surprised at any thing so bad before the Xtian era, or rather, I mean, before Christianity became the established religion of the empire; for a temple it certainly was, and not a church.—*At Bostra I think you are mistaken in supposing that the theatre consisted in only seven or eight ranges of seats.* It is true that those we see are the uppermost; but there are two, if not three stories *of* high arched vaults below, of Saracen work, which occupy the height of at least two more flights of seats (which are even visible in many places), and the scene consisted in three, if not four orders of architecture, one above the other, of which there is ocular demonstration, that irregular Doric order which is visible being the uppermost range. I will demonstrate this to you from my plans.

"Now, from a general view of the architectural remains of the Hauran, &c., my opinion is very decided, that there is nothing to justify an opinion that any of it belongs to a period more remote than that in which it became a province of the Roman empire. As to the temples and larger buildings, there cannot remain a doubt upon any body's mind that is conversant with antiquities; the same applies to the theatres and the baths. With respect to the private dwelling-houses, we have less means of comparing them, but the inscriptions fix the æra of many of them, and wherever there is any ornament, it is purely Roman, or corrupted from the Roman, and precisely such as occurs about the temples or early Christian churches; the best of all the private houses having its roof supported on a row of debased Ionic pillars, not to mention the arch, which occurs almost universally, and is in itself a sufficient objection to any higher antiquity being assigned to these buildings. It is true, that private dwellings must have existed previous to the Roman conquests, and, from the nature of the materials, might, and may exist to this day: but when we find that we must exclude from the number all where

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* "These three instances of names being forgotten altogether, as the spaces are blank in the original; and one name first written *wrongly*, and subsequently corrected by *another* being written over it, are selected as proofs that the writer of the letter, Mr. Bankes, did not take notes on the spot in his tour; because, if he had done so, such omission and mistakes, in such important points as *names of towns*, could not have occurred

Who went with them?—Mahomet, the servant who came from Egypt, Mahomet Mehedy, and Mr. Buckingham.

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the arch occurs, or where there is any ornament or inscription (generally speaking), by far the greater number, and the best specimens must be struck positively off the list, and a few huts and hovels only will remain, which may be pretty near the truth. It is most probable to suppose, that the Romans introduced into these countries a more spacious and commodious mode of building, adopting, from the natives, a mode of construction which necessity (from the total want of timber) had originally taught them.

"After all, upon reflection, the decision which I have come to upon this point (and in which I have not found any thing to shake me), does not diminish the interest which these antiquities ought to excite. With the single exception of Pompeii, where shall we find the private dwellings of the Romans? We have them here in infinitely greater numbers, still habitable or inhabited, closed by their original doors, and sheltered by their original roofs, and the horses eating out of the same mangers as they did sixteen hundred years ago. As for the towers, they were sepulchral, and are to be referred to the same time (I mean the earliest of them). You will find that they are exactly similar to those about Palmyra; and though the form of a tower seems oddly chosen for a place of interment, it was a favourite one with the Romans, who, in their own country, and about their capital, seem generally to have preferred a round form, like the little one outside the great gate of Bostra. Their mouldings and cornishes are purely Roman, and every thing tended to confirm me in my first conjecture, with the exception of the single circumstance, that these towers are often found within, and in the very heart of the villages (though, certainly, oftener about the skirts of them). But even this difficulty was removed by the sight of those at Nedgeraun ——,* Medgdel, which have set the matter past a doubt in every respect. The sarcophagi there, in both instances, remain in their places; and on the one we read the names of the persons that occupied them, with the additional circumstance that they are of Christian times. And, as if it were on purpose to obviate every possible objection of the tower having been converted to this purpose after the æra of its construction, we have the same ornament repeated from the part of the sarcophagus upon the ceiling, and the whole taste and style corresponding throughout. These towers at Medgdel are as much in the heart of the village as any whatever, so we have no alternative, but to suppose either the other buildings posterior, or that in the Hauran, contrary to the usual practice, they did bury within the towns. At Shakkah there is another of these towers, standing detached in the field, that seems, from some long poetical inscriptions, to have been the burial place of the family of Bassus, whose name occurs often in the inscriptions of the Hauran. The bones of him and his family have been rooted up, and are lying scattered at the door of the tower. What strikes me with surprise is, that in many of these towers I could discover no means of getting at the upper stories. I may, perhaps, find it explained at Palmyra, which will furnish the best commentary on them. Of the pointed arch, which occurs frequently, I know not what to think: that some are very ancient I am satisfied, and that most of them are to be referred to Saracen times or since. But my chief difficulty occurs in having found them in several large Christian churches, which can hardly be supposed to have been erected subsequent to that æra, and still less by that people.

"As for the castle at Salkhut, I am satisfied that it is a Saracen work altogether, and no part of it, as it now stands, Roman, or of any higher antiquity. The very circumstance of the manner in which older inscriptions and ornaments are found patched into it, whilst it is proof that something did exist here previously, puts it past a doubt that the present is not a fabric of those times, but is to be referred to the period of the great Arabic inscriptions that are carried in bands round it. The grandeur and solidity of its construction form no objection, when it is observed that the castle at Bostra, which, in the general plan, it resembles very much, is fully equal to it in this respect, which, from being grafted on the ruins of a noble Roman theatre, sufficiently determines its own æra, without reference to the inscriptions that abound upon it. I do not know whether, in the hasty view you took of Salkhut, you examined this town. You would, I think, have observed that the houses there are apparently of a less remote antiquity, and of a worse construction than usual, and the mosch entirely of Saracen work, with shell niches in the minaret. By the bye, *from the* DESCRIPTION IN YOUR NOTES *of the fortress of Adjelown, I am almost persuaded that that also is a Saracen work* (Bostra, you will remember, has the rustic masonry all over it, and instances of the fan *or shell niche are without* number), though I *know you are of a different opinion*, and I WILL NOT VENTURE TO SET MINE AGAINST IT.

"I found an interesting little spring in a valley not far from Salkhut, to the N.W., over which there has been a rich little temple, and an inscription of the time of the Emperor Gordian. I have been careful and exact in my drawings, which are in a great number, and I DO NOT THINK YOU WILL BE ASHAMED OF HAVING YOUR NAME ASSOCIATED TO WHAT I MAY ONE DAY OR ANOTHER THROW TOGETHER INTO FORM.

"Do me the favour to keep this letter, not for your use, but my own; you know how *indolent* I am about *writing*, and I have thrown here many things upon paper, which I may, perhaps, *never do again*.

"I shall set off the day after to-morrow for Banias, and so make my way to Baalbec, where I hope to join you about the 19th or 20th. "Faithfully yours,

"W. JOHN BANKES.

"Remember me kindly to the Doctor.
"Enter old Chaboceau and the toad-eater!! so adieu."

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* See note in preceding page.

What did Mahomet, the servant, carry with him?—(Although this simple question was repeated two or three times by the Counsel, the witness could

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" I have printed the foregoing letter in its complete and perfect state, as it was insinuated that it might contain some account of my notes, which Mr. Bankes professes to have seen, being *sent to him* by letter, so as to invalidate, if possible, my assertion of its relating to his inspection of these notes at the time of our meeting in Damascus. The account of that meeting, on the 23d of March 1816, has been already given in illustration of the 4th head of the charges enumerated; and the parts of this letter which speak of my notes on Adjeloon, of my associating my name with that of Mr. Bankes and Mr. Burckhardt in a joint publication, &c. all relate to this meeting, as may be seen by comparing them together. His compliments to my superior understanding, and his hope that I should not be *ashamed* to see my name associated with his, may not have *been* deserved: but it is certainly not from *such* a quarter that one would expect to be soon afterwards set down as ignorant, and incapable of making any notes worth *publication!* Such is the virtue and consistency for which rank, family, and respectability of connections, are considered guarantees.

" I am almost ashamed to dwell longer on this subject: but I hope the reader will grant me a few moments' patience, while I show what was my conduct towards Mr. Bankes during the period that he was slandering me. I had sent him home plans and manuscripts of my own, respecting Nubia, from Bombay, to use as he thought proper, without asking even an acknowledgment. I had written him, also, several of the most friendly letters from Ceylon, Madras, and Calcutta, some of which must have reached him. His insulting letter to me from Thebes, was dated June 1819. In August 1819, I was occupied with the most friendly intentions to him, in utter ignorance of what awaited me. My friend, Captain Cloete, of the King's 21st Dragoons, left Calcutta about that period, with the intention of going to England. Among other persons there, to whom I was desirous of sending letters by his hands, was Mr. Bankes. I accordingly gave him the following letter open, with directions that, if he should remain at the Cape, which he thought possible, he should seal it, and enclose them all to Mrs. Buckingham, who would forward them to their respective addresses.

" The following is the letter which I addressed to Mr. Bankes, supposing him to be in England, just two months after his insulting and infamous letter was despatched from Thebes to me in India, but long before it reached me, as that was twelve months on its passage here:—

" To W. J. Bankes, Esq.

" *Calcutta, August* 1, 1819.

" My Dear Sir,—I have written to you several times since my arrival, or rather settlement in India, but as I have not heard from you in return, I suppose that some of the letters, at least, must have miscarried; which I can the more readily believe, from knowing how carelessly every thing connected with the Indian post-office is managed.

" The object of my present letter is, partly, to make you acquainted with a gentleman in every respect entitled to your regard, and partly, through him, to say something to you respecting myself, as I naturally believe that it is impossible for men to have passed through scenes which we shared together, and soon after entirely forget each other. I can very safely say that such is not the case on my part, and I am willing to do you the justice to believe it is not so on yours.

" Captain Cloete, of H. M. 21st Dragoons, who will have the honour to present you this, is one of my most intimate and familiar friends, and will give you every information regarding my present occupations and pursuits that you can desire to know; and at the same time that you may gratify your wish in this particular, you will, I am sure, be delighted with the channel through which it is effected. You will, long ere this, of course, have seen the prospectus of my book, and have heard all the particulars regarding it from Mr. Murray. If it had been possible to have formed the coalition which we talked of at Damascus, and which Sheikh Ibrahim so indignantly rejected, I should have been much pleased, and the union of our separate labours would have made a more perfect work than either will make alone. I had been led to expect, from some mention of your name in the 'Quarterly Review,' that a work of your own was in the press, and would very soon appear; I hope so, indeed, for the gratification of the world at large, and more particularly that portion of them who desire to be possessed of the best information regarding the most interesting countries on the globe, which you will have it in your power to write so ably, and illustrate so beautifully by the masterly efforts of your pencil. I sent you home by the *Swallow*, from Bombay, upwards of fifteen months ago, the plans and descriptions of the temples in Nubia, to incorporate with your own work, as I had promised to do; but I have not heard of their arrival, though the ship, I believe, got safe, but has not returned, as far as I can learn, to this country. They were addressed to you, in Palace-yard, Westminster, where I supposed they would reach you; and, if they have, I hope you will make free use of them.

" A subject that presses very deeply on my mind, is the injury done to me by Mr. Burckhardt, whose good opinion I once enjoyed to a high degree, as you are aware, and who, all at once, almost without deigning to assign a cause, not only changed his sentiments towards me, but became my bitterest enemy, by giving publicity to distorted facts, positive falsehoods, and wilful misrepresentations, tending to undermine my reputation. It fortunately happened however, that Mr. Babington, the companion of my voyage from India, whom Mr. Burckhardt cited as his authority for many of the facts alleged, saw this paper, and instantly wrote a very full and able refutation of the charges laid to my name by the Sheikh, copies of which have

not understand it; and the interpreter was obliged to explain it. This circumstance, it will be seen, was afterwards remarked upon by Mr. Brougham.) —He carried a portfolio, a tin case for drawings, paper, and compasses.

Were those Mr. Bankes's?—All.

Did you observe whether Mr. Buckingham had any portfolio or paper for drawing?—Nothing of the sort. (78.)

Did you keep Mr. Bankes's money?—Yes.

Where was it placed?—In a bag.

Had Mr. Bankes any money with him?—He had some money in his girdle. (79.)

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been sent to England. This gentleman, however, who is the son of Dr. Babington, a physician of some eminence in the city, is fortunately now in London, and is able to repel verbally, as well as by writing, the malicious accusations of my enemy. It is possible you may have met with Mr. Babington before this; but if you should not, and desire to be set right on the subject, I should rather refer you to that gentleman, who was my fellow-voyager for six months, than urge any thing on my own part in explanation or reply.

"I have reason to believe that my wife and children are in your county, at Charmouth, in Dorsetshire; my daughter Virginia being with Mrs. Corbyn at that place. If it should be near Corfe-Castle, or occasion should ever call you that way, it would give them great pleasure to see and know one who has shared the dangers and the pleasures of their best friend, more particularly as our journey was since I have seen them, having left England in 1813, and never had occasion to return to it since. I hope, and believe too, that you would find them worthy of your regard.

"I have heard from Lady Hester Stanhope, since my arrival in Bengal, and have written her by this occasion, as I suppose her ladyship will be in England when this reaches you. Captain Cloete will be able to tell you all about my present occupations and pursuits, which are necessarily impermanent, and may cease at a very short notice; but, as long as they last, they will entirely preclude the possibility of my attending to any thing for publication in England; should they cease, I shall have that as a subject to turn my immediate attention to.

"In such an event, however, I should certainly quit a country where fortunes are no longer to be made by a ten years' residence as formerly, but where, though the chances of gain are lessened, the certainties of evil from climate and society are, I should think, as great as ever, and repair to the re-enjoyment of my family and my native land.

"Under the hope that I shall occasionally be favoured with a line from you to hear that you are well, and happily occupied, I remain, my dear sir, faithfully yours,

"J. S. BUCKINGHAM."

"As Captain Cloete remained at the Cape, this was sealed by him, and sent on to England as directed. Mrs. Buckingham accordingly finding on enquiry that Mr. Bankes had arrived in town, enclosed it in a note to him as addressed; and, to her great surprise, received it back again by the post, with the seal unbroken, and enclosed in the following envelope:—

"'*Old Palace Yard, Tuesday, June* 13.'

"'Mr. William Bankes presents his compliments to Mrs. Buckingham, and begs that the 'answer which he thinks it necessary to return to her note, may not be construed into any 'incivility towards her. Having determined that he will have no further communication with 'Mr. Buckingham, either by letter or otherwise, he takes the liberty of returning to her the en-'closed, with a request that it may be transmitted to him unopened.'"

"Was this the act of an innocent man? or was it not rather the sullen obstinacy of one who knew he had done wrong, and who would, therefore, hear of nothing which might relate to a person of whose very name, as well as letters, he had so much need to stand in dread? This is only of a piece, however, with the whole transaction, as showing that, in return for the kindest and best intentions towards these men, Mr. Burckhardt and Mr. Bankes, it was my fate to receive, and their disgrace to offer, nothing but insults and injuries in return.

"This letter, with Mr. Bankes's envelope, and Captain Cloete's seal, which has been verified at the office of Messrs. Palmer and Co., his correspondents here, are, with the rest, now in my possession, having been brought back from England with the various other papers and letters from thence; and add another link to the wonderful chain of evidence, by which this whole case is so strongly connected and held together."

(78) The charge of Mr. Bankes is, that Mr. Buckingham wrote on the journey from his (Mr. Bankes's) dictation, and also that Mr. Buckingham copied fair, for his own use, what Mr. Bankes had written with his own hand. How could this be done without paper, or "any thing of the sort?" But Mr. Bankes himself admits that Mr. Buckingham *had* a note-book four inches square; and, at all events, whatever materials he had for *copying* either drawings, notes, or plans, all of which he is accused of doing, would be quite sufficient for making such drawings, notes, and plans, originally, as well as for copying them.

(79) It will hardly be supposed that Mr. Buckingham could make a journey from Egypt to

How many Arabs came back to Nazareth?—Three.

Had Mr. Buckingham any servant with him?—None: he left him to go from Jerusalem to Nazareth.

Did you pay the Arabs?—By my master's order, I paid them 250 piastres. (80)

Were they taken out of the bag?—All.

Did you continue to keep the bag?—Yes.

Did Mr. Buckingham put any money into the bag?—Never. (81)

Did Mr. Buckingham ask you to lend him any money?—Yes; ten dollars.

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India without having money too; for Mr. Bankes does not pretend to have paid more than the expenses of this seven days' tour on Mr. Buckingham's behalf.

(80) The amount of the whole disbursements always stated by Mr. Buckingham were 216 piastres; not far short of the amount here admitted, of which he contends that he paid the half, and shows an entry, in an attested original book of disbursements, to the amount of 108 piastres, instead of one-fifth of the whole sum; which, as Mr. Bankes's party consisted of four, and Mr. Buckingham was alone, he ought only in fairness to have paid. The whole sterling value of this sum is, however, thus easily computed:—In the latest authentic work on Egypt, by Mons. Mengin, in treating of the land-tax in that country (vol. 3, p. 343), he gives this incidental explanation of the value of the piastre, where he says, "The contributions amount to sixty-six millions of piastres, which are equal to twenty millions of francs, or about £850,000 sterling."* By either of these calculations the utmost sterling value of two hundred and fifty piastres would be just £3. 2*s.* 6*d.*; so that, supposing Mr. Buckingham to have paid actually *nothing* on this tour, and his full fifth were to be considered as still owing from him to Mr. Bankes (and nothing more could be claimed, because Mr. Bankes himself admits, in his own letter, that all the preparatory expenses were incurred before he even saw Mr. Buckingham, so that the addition to his party could have increased no other expenses than those of the road), even then, according to the highest estimate of Signor Antonio Da Costa, Mr. Bankes's purse-bearer himself, this mighty debt due to the "descendant of an ancient house," and "heir to a splendid fortune," by one, too, whom he had *invited* to join him, would be the enormous sum of TWELVE SHILLINGS AND SIXPENCE!—or, taking the full half of the entire sum spent, it would amount to the appalling debt of ONE POUND, ELEVEN SHILLINGS, AND THREEPENCE STERLING!! Truly, this vast amount might, if distributed among a proper number of "Saving Bankes," at a farthing in each, and suffered to run on for a sufficient time at compound interest, realize the dreams of those who saw globes of solid gold, larger than the earth we inhabit, springing out of still smaller savings. What a nucleus of future treasure is therefore here wasted and destroyed!

(81) It was, perhaps, wise in him not to do so; for it might have been hard to get it out again when guarded by such a master and such a man. But the folly of the question, and the uselessness of the answer, must be apparent; unless, indeed, it be meant to say that no money would pass current but such as came out of this magical bag. Mr. Buckingham paid Mr. Bankes his *thirty-two shillings and sixpence*, not by putting it into his bag, but by giving it into his own hands; and his only oversight was, that he did not take a written receipt for the money. The following is a copy of the entry made of it at the time, and certified to be seen soon after in India, by the parties whose names were subscribed to it there.

"'*Extract from a small red memorandum-book, containing an account of disbursements on a Voyage and Journey from Egypt to India by way of Syria, began December* 1815.

'February 5th, 1816.—Paid the whole expenses of our journey across the Jordan to Jerash, and return to Nazareth, including guides, provisions, &c. (my portion) piastres 108 0 0."

"'We certify this to be a true extract from the original book of memoranda exhibited to us by Mr. Buckingham.

(Signed) "'C. D'OYLY, J. CALDER,
J. PALMER, HY. CHASTENAY,
J. YOUNG, G. CHINNERY,
J. MELVILLE, P. M. WYNCH.'"
JOHN YOUNG,

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* See an article on the Agricultural and Commercial Resources of Egypt, in the 'Oriental Herald,' vol. VII, p. 265, Note 10.

Where was that?—I said I had no money but my master's, and I would not give it without orders—he must ask Mr. Bankes.

Was that at Nazareth?—Yes.

Did you afterwards receive orders from Mr. Bankes to lend Mr. Buckingham the money?—I did, and gave him ten dollars. (82)

Did you see a little book in your master's possession at Nazareth?—Yes.

Look at that (handing witness a very small book, about two inches square.) Is that your master's note-book?—Yes; he brought it from Madrid.

Did you see it in Mr Buckingham's hand at Nazareth?—Yes.

What was he doing with it?—He was taking a little copy from it on paper. (13)

Do you recollect Mr. Bankes preparing a plan after his return from Jerash?—Yes.

Can you identify it?—Yes.

Did you assist in pasting it?—Yes.

Did you afterwards see Mr. Buckingham copying the plan?—Yes.

Was he tracing the plan on the window of the convent?—Yes. (84)

*Cross-examined by Mr. Brougham.*

When did you leave Mr. Bankes's service?—In 1820.

Where have you been since?—In my own country.

Where did you leave him?—At Florence.

When did you come over here?—In August 1824.

And you have been here ever since?—Yes.

Have you been living with Mr. Bankes during that time?—Yes.

In his house?—Yes, and when he went into the country he took me with him to see the country. (85)

Were you ever in England before?—No.

Did Mr. Bankes and Mr. Buckingham speak in Italian to you?—Yes; Mr. Bankes spoke good Italian.

And Mr. Buckingham?—He spoke good Italian also.

Did Mr. Buckingham carry a travelling bag?—He had a sack.

You say that Mr. Bankes had that little book which has been shown you?—Yes.

Did you ever see any other book besides that?—No.

Mr. Gurney.—Will you ask him, my Lord, whether he means at that time or during the whole of the journey?

By the Lord Chief Justice.—Witness, you say that you saw that book at

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(82) Even if this were true, which it is not, it ought to be shown, to be worth any thing, that these ten dollars were never repaid: but Mr. Bankes, who makes such an outcry about his thirty shillings, says nothing himself about the fifty, to which ten dollars would amount; and the world will judge whether he would be likely to pass them over without notice in Da Costa's account, or whether such a *large sum* as this would entirely escape his memory.

(83) Had this been even true, which it is not, it should be shown that this "little copy" from this "very little book" formed a part of Mr. Buckingham's published work, for that is the charge; and if this had been believed, the whole contents of this note-book, of which not more than twenty pages of two inches square were written on (the rest being all blank paper), might have been read in less than ten minutes; and the fact of some part of the printed book, now four years before the world, corresponding with these notes, been as easily shown. But it was not even insinuated, and therefore it may be concluded there was no foundation whatever for the charge. The counsel for Mr. Bankes did not venture to read a line of this book.

(84) This fact has always been admitted, because it was done openly, with Mr. Bankes's knowledge and consent; the plan being, in truth, as much or even more clearly the property of Mr. Buckingham than of Mr. Bankes himself.

(85) This is a fact worth remembering: For this Portuguese witness and his companion, Mahomet, Mr. Buckingham, on the application of Mr. Bankes himself to the Court of King's Bench, has, for these last two years, been paying at the rate of about half-a-guinea per day; which, it is said, is not to be refunded, though their evidence has proved nothing (although an effort will be made to appeal to the court on this subject); while they were living in Mr. Bankes's house, and journeying with him on parties of pleasure to see the country!

Nazareth; did you ever see any other book at any other time during the journey?—Plenty. (86)

Lord Chief Justice.—You have said that you heard Mr. Buckingham ask Mr. Bankes to take him with him to Jerash. In what language did he speak?—In English.

Lord Chief Justice.—Did you *then* understand English?—Similar to the present. (87)

Lord Chief Justice.—Was it in English you heard Mr. Bankes make the condition that Mr. Buckingham should not draw?—Yes; I had been in the service of an Englishman before. (88)

*Giovanni Benatti examined by Mr. Gurney, through the medium of the Interpreter.*

Were you in Palestine with Mr. Bankes?—Yes.

Did you go by the name of Mahomet?—Yes.

Did you act as interpreter for Mr. Bankes?—Yes.

Did you go with Mr. Bankes to the Dead Sea?—Yes.

Were you with Mr. Bankes when he engaged with the Arabs to guide him to Jerash?—Yes.

Was it before or after this that you saw Mr. Buckingham?—After.

Did Mr. Bankes make a present to the Governor of Jerusalem for the release of the Arab guide's son, who was in prison?—Yes.

What was the present?—Some silver, and pearls for a necklace for a lady.

Did you go with Mr. Bankes and Mr. Buckingham to Jerash?—Yes.

Did you carry a portfolio and paper?—Yes.

Had Mr. Buckingham any portfolio or *paper*?—No. (89)

Did you see Mr. Buckingham write in any book at Jerash?—I saw Mr. Buckingham and Mr. Bankes writing in a grotto. (90)

Tell us what they did.—They sat down together, and made a design *together*. (91) Then Mr. Bankes spoke, and Mr. Buckingham wrote (92).

Whilst you were on the journey, was any money paid for expenses?—Yes, by me.

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It is to be hoped that their *share* of these expenses will not amount to much, because even Mr. Buckingham's pay to them, liberal as it may sound, will hardly cover many excursions of pleasure in England, however ample it might be to defray the cost of such tours as that to Jerash, where bread, dates, milk, and water, formed the only food of the party for six days out of the seven.

(86) It would have been satisfactory to have seen some of these also produced.

(87) These expressions, which many persons were struck with when uttered, appear to have made a deep impression even on the Lord Chief Justice himself.

(88) This may or may not be true; but, even if the latter, it would prove nothing: for here, according to the witness's own confession, he had been in the service of Mr. Bankes, an Englishman, for seven years, and could not now understand the plainest questions; his previous service with some other Englishman could not, therefore, have been of much advantage to him, as far as the acquirement of the language was concerned. Ten years ago, at Jerusalem, however, neither he nor his companion appeared to understand a word of the English tongue; and their slow progress since is tolerably good proof that they are not persons who could learn a great deal in a short time.

(89) The remark already made as to the pretended want of paper will equally apply here.

(90) This circumstance is sufficient to prove that there was no secrecy as to writing; and that, if the parties were *both* writing in a grotto, they were each probably making his own notes or observations.

(91) This testimony, as to joint co-operation in making the design, would alone establish the claim of joint property in the design so produced.

(92) This might be strictly true; but it required to be proved, that what the one wrote was what the other dictated. One gentleman might be talking and another writing, even in the same grotto, and yet without the least connection between the words spoken and those committed to paper. To show that there was no concealment of this fact of their joint labours in the grotto from the public, when the book was sent to England for publication, nearly eighteen

Was any other money paid, except what was paid by Mr. Bankes?—No.
Do you know that little book? (the book before mentioned)—Yes.
Did you see Mr. Bankes writing in it?—Yes.
Did you see Mr. Buckingham with that book after you got back to Nazareth?—I one day saw Mr. Buckingham, in a room with Mr. Bankes, taking something from the book, on paper. (93)

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months before Mr. Bankes's libellous letter reached Mr. Buckingham in India, the following passage may be extracted from the account of the visit to Jerash, given in the Travels in Palestine, at p. 347, quarto edition:—

"While the guides and our servants were taking some refreshment, Mr. Bankes and I ascended to a convenient spot, where we could both conceal ourselves from the passengers below; and while Mr. Bankes was employed in taking a hasty sketch of the whole view as it appeared from hence, I caught the opportunity of our throwing together the recollections of our route from Jerusalem thus far; as not a moment had yet offered itself, from the time of our leaving that city, in which it would have been safe to have written, or to have excited curiosity by the appearance of such unusual things as pen, ink, and paper."

(93) If Mr. Buckingham was *with Mr. Bankes* in the room when he took this "something" from the little book in question, there could have been nothing surreptitious or clandestine in this. Still, what that something was, or what use was made of it when copied, does not appear; and yet both were necessary to be shown, in order to substantiate Mr. Bankes's charge of having copied notes, and being about to turn them to account. This "little book" (and its extremely diminutive size well entitles it to the epithet) was examined, however, by a person in court, and out of the twenty written pages in it (the remaining portion being actually blank), not one of them related to Jerash at all, though the whole of Mr. Buckingham's account of that city, extending over sixty-three printed quarto pages, from page 342 to page 405, *must* have been drawn from Mr. Bankes's notes on it, if Mr. Buckingham kept no notes of his own; and the only note-book of Mr. Bankes's produced in court, was this two-inch square one, with about forty leaves of paper, less than twenty pages of which were written on, and these containing no mention of Jerash, being apparently hasty memoranda of the road, after quitting the ruins of that city! As the detailed proofs of the notes of Mr. Buckingham having also been *seen* by Mr. Bankes, and carefully *read* by him, were not given at an earlier period, they may be introduced here, in the state in which they were originally published in India in 1822, and since in the Appendix before referred to—p. 624.

*Supplementary Letter from Mr. Buckingham to B. Babington, Esq. in London.*

"*Calcutta, July 4th*, 1820.

"My dear Babington,—Since these letters and papers have been prevented going by the *Fame*, Captain Eastgate, as originally intended, as it was thought advisable to retain notarial copies of the whole, I shall add here, as a supplementary note, a very striking discovery, which has arisen in the course of inquiry. It is this:—

"It had been suggested to Mr. John Palmer, in the course of his conversations with others on this subject, that it was possible I might have concealed from Mr. Bankes the fact of my having visited Jerash a third time, or subsequently to our joint visit there, and that he being consequently ignorant of my having collected any materials in addition to those which we collected jointly, might have supposed that in giving an account of Jerash, I could only have made use of such information as I had acquired in company with him, which he, considering this to be obtained through his means, would be borne out (consistently at least with that consideration) in condemning, as a breach of confidence, and an unwarrantable use of his or our joint materials, as exclusively my own.

"When Mr. Palmer waited upon me to ask me whether I possessed any means of removing this objection, I stated to him that I did not think I had any proof in *writing* of Mr. Bankes's having seen my notes, bearings, and traces of plans made in my *third* visit to Jerash; but that I had a perfect recollection of his having seen them, and of our conversing together thereon, both at Damascus and Aleppo, where we afterwards met. I was prepared to pledge my honour to this fact; but we both regretted, as every other point had been satisfactorily met by documentary evidence, that this could not be equally so.

"Just as Mr. Palmer was about to leave me, it occurred to my recollection, however, that in one of Mr. Bankes's letters to me in Syria, No. 2. dated at Damascus, April 2, 1816, in speaking of the ruined places of the Hauran generally, and particularly of the difficulty of deciding about Roman and Saracen fortresses, he says:—'By the bye, from the description in your notes of the fortress of Adjeloon, I am almost persuaded that that also is a Saracen work (Bostra, you will remember, has the rustic masonry all over it, and instances of the fan and shell niche are without number); I know you are of a different opinion, and I will not venture to set mine against it.' And remembering that the only notes I had on Adjeloon were in the *very same book* with those containing all the notes of my *third* visit to Jerash, I produced the *original* to Mr. Palmer, which he recognised as one of those laid before the gentlemen

Did you see Mr. Buckingham copying a plan on a window?—Yes.

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who had met at my house on the 16th of June. It is a small memorandum-book of Arabic paper, containing notes of my journey, made on the spot. It is marked on the outside thus: 'No. 11. from Assalt to Jerash, Adjeloon, Mezerecbe, and Bozra in the Hauran.' It begins with Wednesday, March 7, 1810, on my leaving Assalt to visit Jerash a *third* time; fourteen pages are occupied with the road between these two places; then follows immediately after, eleven pages devoted wholly to additional particulars collected at Jerash on my *third* visit, when Mr. Bankes was *not with me.* Immediately following the page where my account of Jerash closes, begins the first account of Adjeloon, in these words, 'See the castle of Adjeloon, like that of Assalt; below it, at its immediate foot, Arrubbudth, now deserted,—twenty soldiers in the castle from Damascus.' Two pages only beyond this, is the following passage: 'Mr. Burckhardt, Sheikh Ibrahim, had been at the castle of Adjeloon about three years since. It is in situation and construction like Assalt and Karak, and like them, no doubt, an old Roman work with Saracen repairs.' Eleven pages beyond this begins, 'Saturday, March 10th,' when I left Cafr Injey, a small village in the valley of Adjeloon, to pay a visit to the interior of the castle, in which day's journal is the following passage:—

"'Ascended from hence to the castle, and saw some cisterns, many hewn stones, and 'part of a public road in the way. The castle is, like that of Assalt, situated on a high hill, and 'is about 400 paces in circumference, being nearly square, with a central buttress, or square pro-'jection on each side. It is built on a limestone rock, and is surrounded by a broad and deep 'ditch, hewn out of the rock, and formerly lined with masonry, where necessary. The foot of 'some part of the castle rock is sloping, and also cased with masonry; the architecture is evi-'dently Roman, large square hewn stones, rough in the centre, and loop-holes in fan-niches of 'Roman arch; yet within, the pointed and the round arch, as well as the flat one, are all used 'in the same room; the pointed arch-work of the interior is amazingly solid, and certainly 'coeval with the building itself. The embrazures for arrows resemble the modern ones for can-'non, except in the size of their mouths, and there are a considerable number of them within. 'It is now in ruins, but we mounted with difficulty on the top, and I took the opposite bearings. 'There is an Arabic inscription of Sultan Salahed-din-el-Mullela-ibn-Yuseff, in the year (no 'date); for which purpose the rough surface of the Roman stones were smoothed down. It is in 'a small oblong tablet, on the east side, underneath the two fan niches of Roman work. The 'castle faces nearly the four (cardinal) points.'

"Then follows a page containing a set of bearings by compass, of seventeen remarkable objects; towns, villages, mountains, lakes, &c., collected for the construction of a map of the country. In the next succeeding page is the Arabic inscription spoken of, and in the following one, part of a Greek inscription from a ruined Greek monastery, called Deer Mar Elias, which I visited after I quitted the castle of Adjeloon.

"These are all the notes I ever made of this fortress, as I never visited it but once, immediately on coming from my *third* visit to Jerash, of which it is within a short day's journey, and it will be seen that these notes, which speak of Roman arches and rustic masonry, and fan and shell niches, could be the *only* notes to which Mr. Bankes's observations could apply, when he says, 'By the bye, from the description in your notes of the fortress of Adjeloon, I am almost persuaded that that also is a Saracen work (Bostra, you will remember, has the rustic masonry all over it, and instances of the fan and shell niches are without number); though I know you are of a different opinion, and I will not venture to set mine against it.'

"As Mr. Bankes *read* those notes of mine on Adjeloon, &c. attentively, and as they begin on the very back of the *same leaf* where the account of my *third* visit to Jerash ends, it will be admitted as very strongly conclusive evidence, that he read *all that related to Jerash also,* as a part about which he must necessarily have been *more* interested than about Adjeloon, where he had never been, and did not, as far as I am aware, ever intend to go.

"With this knowledge, therefore, of my having been at Jerash alone, subsequent to our joint visit, and with the proofs in his hand of my having collected very copious additional materials of bearings, traces of plans, inscriptions, &c., it became a *wilful falsehood* to say, that in announcing to the world an account of Jerash, I had made an unjust use of his materials, and to say, as he has done in his letter sent by Mr. Hobhouse, 'that I took down no notes of this place, but such as I set down at his dictation from his own mouth, or copied from those written by his own hand; that the few bearings I took were with his compass; and that I could not copy Greek inscriptions, as I was ignorant of the learned languages, and was so far from an antiquarian, that I did not know a Roman ruin from a Turkish one.' He must have known distinctly and unequivocally that I had taken notes of my *own,* bearings with my *own* compass, Greek inscriptions several in number, and traces of buildings not to be found in his plan; and with these facts before him, his assertions to the contrary can be called no other than deliberate, wilful, and malicious representations and untruths.

"In pursuing this inquiry a little farther, after Mr. Palmer left me (which he did with an expression of his satisfaction at the fulness of the proofs submitted to him by me, of Mr. Bankes's being acquainted with my third visit to Jerash, and of my not having concealed any thing of this from him), circumstances arose to render it highly probable that Mr. Bankes has also seen the very item of disbursement in my little memorandum-book, which stated the sum I had paid as the portion of my expenses for the journey we made together from Jerusalem to Jerash. It is this: at the end of this book, marked 'No. 11. from Assalt to Jerash, Adjeloon, Mezerecbe, and Bozra in the Hauran,' (in which, as has been shown, he had read my notes on Adjeloon attentively), in the last page is this passage: 'Half an hour from hence we

*Cross-examined by Mr. Brougham.*

I think you said, that you were a Mahometan ?—I attend the mosques Turkey, but I am a Christian here. (94)

You said that you saw Mr. Bankes and Mr. Buckingham, drawing together in a grotto ?—Yes.

Did the expenses you spoke of during the journey, consist in money given to the Arabs by way of presents ?—Yes.

Was it not very little ?—Yes, very little.

Then there was no great expense attending the journey ?—Mr. Bankes paid 250 piastres. (95)

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passed a stream called Aba Hamāghur, and in another half hour entered Bozra.' The remarks on Bozra, with the inscriptions copied there, &c., are contained in the end of the small red book appropriated to disbursements, as they were chiefly written in the streets as I went along; this passage is under date of 'Wednesday, March 14th, 1816,' and the account of my disbursements was left off in the February preceding. The item regarding our joint expenses, and the payment of my portion of it, was entered on the 5th of that month, or a full month prior to my account of Bozra being written, and both were contained in the same book. Now I can prove, by Mr. Bankes's letter to me (No. 2. the same that acknowledges his having seen in my notes the description of Adjeloon), that this red book, which contained *my* disbursements, and the notes on Bozra and Salkhud altogether, was also in *his possession*, and the notes of it read by him; which renders it equally probable, that he did see the very item entered of my portion of expenses paid for our joint journey to Jerash; or, at all events, it will prove that I did not scruple to put this into his hands, and that there was nothing relating to our travels, whether when together or when separate, that I ever wished or endeavoured to conceal from him.

"In this letter of Mr. Bankes's, he says to me, 'At Bostra, I think you are mistaken in supposing the theatre consisted of only seven or eight ranges of seats. It is true, that those which we see are the uppermost, but there are two if not three stories of high arched vaults of Saracen work below, which occupy the height of at least two more flights of steps (which are even visible in many places), and the scene consisted in three if not four orders of architecture, one above the other, of which there is ocular demonstration, the irregular Doric order which is visible being the uppermost range.' The points in which Mr. Bankes thought me mistaken, and the only place in which he could have seen *any* notes of mine on the theatre at Bozra, are contained in the little red book appropriated originally to disbursements, and the passage to which he particularly alludes, is the following:—'Within the castle (of Bozra) in the centre, is a fine Roman theatre, it faces exactly N.N.E., had a closed front; with Doric wings, fan-topped niches, and Doric doors below, and a range of pilasters above them. There was only one flight of seats, seven or eight in height, and the upper one had behind it a Doric colonnade, running all round the semicircle; the pillars about three feet diameter, supporting a plain architrave. The circuit of the upper range of seats is 230 paces, and the whole extremely chaste and fine; there are nine flights of cunii, moulded as well as the benches. The entrance was made from about thirty arched doors from without, and small steps led to the benches above.'—In this small red book, which contains the only notes I ever made of Bozra, and which Mr. Bankes had with the rest for his perusal, are *fifteen* Greek inscriptions, some of great length, with very copious notes, all made when we were separate; and offering additional proof that he uttered a wilful falsehood, when he stated I neither made notes, nor copied inscriptions, from want of paper, incapacity, and ignorance of the learned languages.

"One instance more may be selected to prove that this book of disbursements was in Mr. Bankes's hands, long *after* the account was closed and discontinued. It is this:—In his letter, after enumerating the arguments which presented themselves to his mind, in favour of the castle of Salkhud being a Saracen work, and not any part of it Roman; he says, 'I do not know whether in the hasty view you took of Salkhud, you examined the town. You would, I think, have observed that the houses there are apparently of a less remote antiquity, and of a worse construction than usual, and the mosque entirely of Saracen work, with shell niches in the minaret. By the bye, from the description in your notes of the fortress of Adjeloon,' &c. &c.—Now, the *only account* I ever had of Salkhud is in the *same* book with that of Bozra, from which place I made a hasty visit to it, leaving Bozra at noon, reaching Salkhud at 3 P.M. and leaving it again at four, returning to Gheryah, a village near Bozra, an hour after sunset, the whole notes of this 'hasty view,' occupying only four pages of a small book, about four inches square. J. S. BUCKINGHAM."

(94) There are differences of opinion among those who were present, as to whether the last word, "here," was used by the witness or not: but the fact of his having for years professed the Mohamedan religion, and observed its rites in Turkey, Syria, and Egypt, and of his being sworn on the Gospels here, is not disputed. It is not this, however, but the internal harmony, consistency, and probability of evidence, by whomsoever given, and under whatever sanction, that is chiefly regarded by the world; and no importance is, therefore, here meant to be attached to this change of profession with change of residence, and no impeachment made of the evidence given on this ground alone.

(95) This is a corroboration of the small amount actually disbursed.

That was the contract before the journey; but on the journey very little money was spent?—Yes.

*Charles Parry examined by Mr. Parke.*

Mr. PARKE.—Have you travelled in Palestine?—Yes.

Did you visit the ruins of Jerash?—Yes.

At what time?—In 1819.

Who accompanied you?—Mr. Godfrey, Mr. Wise, and Mr. Bailey.

How long were you there?—Nearly two days.

Had you an opportunity of making a complete plan of the place by measurement?—Yes.

I believe you have that plan here?—I have.

Had you such an opportunity of examining the place, as to enable you to make your plan perfectly accurate?—I have every reason to believe it so.

Have you compared the plan published in Mr. Buckingham's book with Mr. Bankes's original plan?—I have.

Does the former appear to be copied from the other?—Undoubtedly. (96)

There are some deviations from the original plan in the copy?—There are.

Are those deviations accurate?—All the deviations are inaccurate.

I believe Mr. Bankes's original plan is not accurate?—No; but it is more correct than the published plan. (97)

Look at the plan published by Mr. Buckingham; the walls in some parts are circular, or waving; is that the case in fact?—It is not.

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(96) It is nothing new to see men of the most liberal professions differ, even in facts, and still more frequently in matters of opinion; nor are architects and surveyors, it is to be presumed, exempt from this common frailty of human nature. It will be well, perhaps, to place in contrast with this unhesitating declaration, the narrative of another surveyor,—not less learned—not less skilful, and not less worthy of implicit credit than even Mr. Parry. The individual alluded to, is Mr. Henry Hamilton, then the principal assistant in the office of Colonel Mackenzie, the late Surveyor-General of India. His statement, which appeared in the 'Calcutta Journal' of August 15, 1823, which was sent to England notarially attested, in 1820, and which has been since reprinted in the Appendix to the 'Travels among the Arab Tribes,' atpage 620, is as follows:—

'*A Memorandum relating to the Construction and Drawing of the Plan of Jerash, or 'Geraza, for J. S. Buckingham, Esq.*

'At the time Mr. Buckingham was living at Colonel Mackenzie's, the Colonel put into my hands a tracing of Jerash, with directions to reduce it to a quarter of the size of the original, and colour and finish it as Mr. Buckingham should direct. Having reduced the sketch as directed, I showed it to Mr. Buckingham, who then gave a MS. paper, containing a series of bearings, and requested me to try the positions of all the places according to the bearings. I set about it, but finding I could not bring any of the bearings to agree, I stated it to Mr. Buckingham; and also added, that I was of opinion, the sketch I had been directed to reduce, had not been regularly laid down by the rules of surveying, from the bearings not agreeing in any one place, though the measurements of length and breadth seemed to be pretty correct, and coincided with his. Mr. Buckingham told me, he was very anxious to possess as correct a plan as possible of the ruins of Jerash, and requested me to construct one afresh, laying down every place in its proper position, according to the bearings given me by him. I experienced very little difficulty in performing this new task. I was engaged in the pencilling part of the work about three days; during this time, Mr. Buckingham would frequently call and give his directions. The several buildings in Mr. Buckingham's plan, many of which are not to be found in the tracing, have all been reduced from separate sketches from Mr. Buckingham's book, and adjusted to the scale on the plan. The lesser details have been partly put in, in pencil, by Mr. Buckingham's own hand. When the plan constructed from Mr. Buckingham's bearings was finished, it was so different in all its essential parts from the tracing of Jerash, that no assistance could be said to have been derived from it; and had this sketch or tracing not been put into my hands, I could have constructed the plan from the bearings without it. It will be observed, that in the plan I constructed of Jerash, all the buildings being accurately delineated by the proper measurements, as contained in Mr. Buckingham's notes, but not mentioned in the tracing, they are actually much larger, though on a smaller proportional scale in comparison to what they appear on the larger tracing of Jerash.

(Signed) HENRY HAMILTON,
Assistant Surveyor.'*

'Calcutta, June 27, 1820.

(97) The question was not as to superior accuracy, but whether the one was a copy of the other.

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* The authenticity of this statement was formally certified by the following inhabitants of Calcutta in 1820: Sir Charles D'Oyly, Bart., Rev. Dr. Young, John Palmer, Henry Chastenay, and P. M. Wynch, Esqrs.

In that respect, the plan resembles Mr. Bankes's?—It does.

Are, in point of fact, the walls of the city angular?—As far as my observation went, they are so. (98)

In Mr. Buckingham's plan, and also in Mr. Bankes's, the figure No. 12 is described as a military guard-house. Is there, in point of fact, any such guard-house?—Not that I observed. It is merely an angle in the wall.

In Mr. Buckingham's plan, as well as in Mr. Bankes's, two gates are laid down. How many gates are there, in point of fact?—Four. There are four openings in the wall, which I judge to be gates.

On the wall, of Mr. Buckingham's plan, two towers are marked; are there any towers there in reality?—None, whatever, at that angle.

That is a mistake in which Mr. Buckingham has copied Mr. Bankes?—Yes.

Mr. Brougham.—Will my Learned Friend show where the figures, which he alludes to, are called towers by us?

The Lord Chief Justice.—The word "towers" is not there; but there is sufficient to denote that they are meant for towers.

Mr. Gurney.—The word "towers" is applied to the figures in the body of the work.

At the opposite corner of the town, there are no towers in Mr. Buckingham's plan. Are there any towers there in point of fact?—Many.

In Mr. Buckingham's plan there are two rows of pillars to the bath. Are there any pillars there in point of fact?—No; there are no traces of any.

There are no pillars in Mr. Bankes's plan?—No.

Is the bearing of the theatre in Mr. Buckingham's plan correct?—No.

According to that plan the scene of the theatre is of the same width as the diameter of the benches. Is that so in fact?—No; the length of the scene is only two-thirds of the diameter of the benches. There is another deviation in Mr. Buckingham's plan from that of Mr. Bankes's with respect to the theatre. Mr. Buckingham has laid down another row of seats which does not exist, and could not possibly exist, there being no room for it.

There is an aqueduct described in Mr. Buckingham's plan. Is there any aqueduct in fact?—There is not.

Is that aqueduct copied from Mr. Bankes's plan?—Yes.

Are the bearings in Mr. Buckingham's plan generally correct?—No; very incorrect.

Do the bearings of the temple agree in the two plans!—Yes.

Are they accurate?—No.

There is a double row of columns. Is that correct!—No.

You are an architect, I believe?—Yes.

Can you read Greek?—A little.

In the defendant's book, Piræus, a port of Athens, is called Piræum. Is that correct?

The Lord Chief Justice.—The book was printed when Mr. Buckingham was not in England. This is too minute, I think.

The question was not pressed.

*Cross-examined by Mr. Hill.*

Were the gentlemen who accompanied you to Jerash persons of education?—Yes.

Did they assist you in making the plan?—They did.

You, being an architect by profession, of course possess peculiar advan-

(98) There was no attempt, either in the original plan drawn up from the joint labours of Mr. Bankes and Mr. Buckingham, or in that drawn up by Mr. Hamilton from Mr. Buckingham's materials alone, to define, with precision, the exact state of the walls. There was a circumvallation about the ruins, and this was expressed by a line drawn around them, in the form in which it presented itself to the eye, without giving a single set of bearings or distances to lead any one to suppose, as in the case of the interior buildings, that the walls were actually surveyed: and this same loose delineation of a surrounding wall is given in the same manner (as will be seen hereafter), in the plan of Mr. Burckhardt, whose qualifications were so highly extolled by the counsel for the defendant.

tages for a work of that kind. Now, with respect to the guard house, you call it by some other name?—It is merely an angle in the wall.

How high are the walls generally; where this guard-house is, for instance?

The Lord Chief Justice.—Are they about ten or fifteen feet high?—About ten feet.

Mr. Hill.—Are the walls continuous all round?—No.

Were you not obliged to employ conjecture and speculation to assist you in making some parts of the plan?—We were.

One man, you know, may conjecture one thing, and another may conjecture another; and a sea captain and an architect may differ in opinion, with respect to an old wall?—Certainly.

Have you compared your plan with that of Mr. Burckhardt?—I never saw Mr. Burckhardt's.

Look at this plan (handing witness the plan published in Mr. Burckhardt's book.)

Mr. Gurney.—You must prove that it *is* Mr. Burckhardt's plan. (99)

Mr. Hill.—That we can do. For the present, I will merely call it a plan. Are the walls in that plan waving, like those drawn by Mr. Buckingham, or angular, like those in your plan?—They are waving.

Are there any towers in that plan?—None that I perceive.

Are there any columns to the bath?—There are.

Do they agree with those in Mr. Buckingham's plan?—Not by any means. They differ materially in situation.

But they agree in existence?—Certainly.

You say that there ought to be no columns whatever there?—Yes.

Then Mr. Buckingham's plan, and that which you now hold in your hand, agree in that respect?—Yes.

Are there any columns to the temple in that plan?—Yes.

Are there columns there in Mr. Buckingham's plan?—Yes.

In your plan, I believe, there are no columns?—Yes, there are; but only one row.

How many gates are there in that plan?—Two.

And in Mr. Buckingham's?—Two also.

How many are there in yours?—Four.

That is to say there are four openings in the wall?—Yes.

Which some persons may suppose to be gates, and some may not?—Certainly.

Mr. Buckingham has marked in his plan an aqueduct, which you say is a bridge?—Yes.

Then in reality there is something there?—Yes. (100)

*Captain Irby examined by Mr. Gurney.*

Are you a Captain in the Navy?—I am.

Were you at Jerash in March 1818?—Yes.

Did you accompany Mr. Bankes and Captain Mangles?—Yes.

How long were you there?—Five or six days.

During that time had you an opportunity of taking accurate measurement of the ruins of the city?—Altogether our party was there seven or eight days, and we were able to take a complete plan of the place.

Have you compared your plan with Mr. Parry's, and Mr. Buckingham's and Mr. Bankes?—No. (100½)

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(99) That is, this proof was necessary, in Mr. Gurney's opinion, because it was going to be used to Mr. Buckingham's benefit. No one could affect really to doubt that it *was* Mr. Burckhardt's plan: but this was something like the doubt said to have been raised on one occasion by the Lord Chancellor, who said, "what matters it that we all read the 'Times' newspaper every day? we do not *legally* know the existence of such a paper, unless some one is prepared to prove that it does exist, by affidavit!"

(100) Whether it was an aqueduct or a bridge, does not yet seem certain; and every one must admit that two things so similar may easily be confounded, by even the most sharp-sighted.

(100½) See Note 102—which shows that no comparison *could* be made; because these supposed *two* plans were but one and the same.

Which of the three plates does yours agree with?—With Mr. Parry's.
Are the walls of the city angular, and not waving?—Yes.
Did you hear of Mr. Buckingham at Cairo and Aleppo?—I did.
What did you hear of his general character at those places?
Mr. BROUGHAM.—I think, my Lord, this question should not be put.
The LORD CHIEF JUSTICE.—One of the defendant's pleas is, that the plaintiff's character was notorious. You cannot, therefore, object to the question.
Mr. GURNEY.—What did you hear of his general character?—I heard that instead of going straight on his mission to India he had been travelling about in search of antiquities. (100½)

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(100½) The following answer to this charge of unnecessary delays in the journey overland to India (which first appeared under Mr. William Bankes's hand in the 'Quarterly Review') was published in India in December 1822, and since in England in the Appendix before referred to, in 1825. It does not require a word to be either added to or withdrawn from it now, and is therefore given as it then stood:

"To return to the journey to India. Every one who has heard of caravan travelling, knows how slow it is. From Aleppo to Mosul, I was still longer than the usual time, from the road being obstructed by the Wahabees. At Mosul I took Tartar horses, and went to Bagdad with Turkish couriers, riding 60, 70, and 80 miles a day, in a burning sun, with the thermometer from 120 to 125 in the shade; and, on arriving at Bagdad, I was laid up in Mr. Rich's house, ill for more than a month, and unable to proceed. Dr. Hine, the medical gentleman there, strongly objected to a descent to Bussorah at that season of the year; as, after a severe illness, a Bussorah fever would be almost certain of bringing death in its train. It was necessary, therefore, to go through Persia to Bushire. This was another long and tedious journey, and accomplished with risk, difficulty, and suffering. From Bushire there were no vessels to sail for Bombay for many weeks; but an indirect opportunity offered of getting on, by accompanying a bombarding squadron of ships of war going to Ras-el-kyma, to chastise the Joassamee pirates. Safety was a duty doubly incumbent on me; first for my family, and next for the interests dependent on the personal explanations I was deputed to make on reaching the end of my journey; yet my desire to get as soon as possible to the place of destination, superseded this, and I accordingly accompanied the squadron to the port of the pirates. While there, though neither fame nor fortune awaited me from the contest, I volunteered my services to act as Arabic interpreter, and actually accompanied Captain Brydges, of H. M. ship *Challenger*, the commander of the squadron, on shore, both of us unarmed, and went through the heart of the Arab town, pelted by some, menaced by others, and surrounded all the way by a ferocious band of the most lawless ruffians, all armed, and wanting only a provoking word or look to cut our throats; sat in the assembly of the chiefs during two hours' warm deliberation, without our having any protection to warrant this temerity, and returned to the ships in a safety little expected by many who had watched our landing, and who never expected to see us return alive.

"This was the last event worthy of notice before my arrival at Bombay, where I went in one of the ships of the squadron, and fortunately found, on my coming there, that Messrs. Briggs and Co.'s interests had suffered nothing from this succession of delays, as the despatches had arrived safe, months before; and the only person who had really sustained injury by the delay, was myself, who had, besides infinite suffering and privation, been three or four times in imminent peril of my life from deadly assaults, not to mention lesser skirmishes, and twice from dangerous illness; who had lost nearly a year in time, with the additional evil of a suspension of all correspondence with England, so that my family knew not whether I was alive or dead; and all this for the paltry consideration of having my bare expenses paid, to which the meanest slave and menial is entitled during the time that he labours for another. This mighty charge of a breach of trust and unnecessary delay, on which so much stress has been laid by those who neither understood nor would use the plain and honest means of informing themselves on the matter, is, therefore, of all the charges that have been alleged, the most groundless and untenable.

"The only crime that can be truly laid to my charge, is that of having travelled with my eyes open, and made use of my reading to illustrate the description of a country full of interesting objects at every step. If Messrs. Briggs and Co. had sent their letters and verbal explanations by a person who could neither read nor write, he might have met with the same obstacles, have spent as much money, and have been unable to give their cause any assistance when he reached his journey's end:—but having entrusted this task to one who could read and write, and who applied immense labour, long after the journey was made, to put his hasty notes into form for the public eye, like petty and needy traders, rather than like liberal English merchants, they insist on having a share of the profits, forgetting that they had no hand in furnishing the mind and capacity, which was the real capital, nor any share in the labour of production; though they were mean enough to insist, that since I could not have written a book on Palestine without passing through that country, and since I should not have passed through it unless I had been charged with their letters, *therefore* they were entitled to a share of the profits derived from the book in question! They might as well claim a share in the profits of the 'Calcutta Journal,' because they might also contend, that unless they had helped me I should never have come to India, and, unless I had come to India, the Journal would, probably, never have been established!!

But what did you hear of his character?—I cannot say that I ever heard it spoken of. (101)

*Cross-examined by Mr. Brougham.*

Does not the bath in Mr. Buckingham's plan resemble that figure in yours, more closely than it does that in Mr. Bankes's?—Yes, with the exception of the columns.

There is some difference between your plan and that of Mr. Parry?—There is some.

Mr. PARRY.—I beg to explain that I concurred with Captain Irby in drawing up the plan he speaks of; that, in fact, is what I call *my* plan. (102)

*Captain Mangles examined by Mr. Gurney.*

Did you visit the ruins of Jerash in company with Captain Irby and Mr. Bankes?—Yes.

Were you there, altogether, seven or eight days?—Yes.

Is Mr. Parry's plan accurate?—Yes.

Did you know Mr. Burckhardt?—Yes.

Did he go by the name of Sheikh Ibraham?—Yes.

Do you know his handwriting?—No.

Did he in 1817 and 1818, in your presence and that of other persons, give an opinion with respect to Mr. Buckingham?—He did. (103)

Mr. BROUGHAM.—I object to the repeating of general conversation.

The LORD CHIEF JUSTICE.—Certainly I cannot receive it in evidence.

Mr. GURNEY.—Had you any means of becoming acquainted with Mr. Buckingham's general character in Egypt?—Only through Sheikh Ibrahim.

Was it through him only?—I think I also heard Mr. Barker speak of Mr. Buckingham.

You mean the Consul at Aleppo?—Yes.

May I ask what the plaintiff's reputation was in Egypt?

The LORD CHIEF JUSTICE.—You must, by your plea, mean that the plaintiff's character was notorious among the residents in that country generally? What two individuals, one in each country, may say, is hardly sufficient to give notoriety. If you choose, you may put the question; but you had

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"I have regretted, often and often, since the period of consenting to give up any portion of the sum expended, that I was ever prevailed on to do so; but I gave the strongest possible proof of my desiring nothing but justice, in my readiness to submit the matter to arbitration, which Mr. Briggs, as if suspecting the weakness of his claim, would not accede to. A lawsuit, to one unused to such proceedings, as I was then, is an appalling thing, and more particularly to one who has no money, who must work to earn his bread, and whose profession (of a sailor) requires that he should be free to move wherever and whenever duty calls; and at that particular moment my ship was under sailing orders for Bengal. It was, therefore, to avoid this, in which even triumph is sometimes ruinous, that I consented, as the lesser evil of the two, to give three promissory notes, one for £50 at six months, one for £50 at twelve months, and one for £100, on the day the Travels might be published, all of which have been paid; though, if Mr. Briggs had a real claim to one farthing of it, he had to the whole, since he never attempted to dispute the fact of its being *all* expended on the journey in question."

(101) Is it possible to be believed, then, after this reply of Captain Irby, that Mr. Buckingham's character could have been so notorious over all the East as is pretended, notwithstanding all the pains taken by Mr. Bankes and Mr. Burckhardt to make it so?

(102) It had been thought by the court, that these gentlemen were speaking of two plans; but it appears that Mr. Bankes, Mr. Parry, Captain Irby, and Captain Mangles, all assisted in making one plan, and were several days conjointly engaged upon it: and each of these individuals, as they had an undoubted right to do, constantly spoke of it as *his* plan; as it was as much the plan of the one as of the other. Upon the same principle, Mr. Buckingham, who is admitted by Mr. Bankes himself to have taken the bearings of the first plan, might as truly call it *his* plan; and yet the principal crime imputed to his charge is, that he ventured, not merely to call it but to *use* it as his own!

(103) Mr. Gurney sees nothing wrong in citing a conversation between two persons unconnected with any actual transaction, as evidence here; though, when Mr. Hill wished to make evidence of Mr. Hobhouse's conversation with Mr. Bankes respecting his positive instructions he was to do with the letter intrusted to him for publication, Mr. Gurney would not admit it.

better not, if you have not better luck with it than you had with your other witness. (104)

*Mr. Parry re-examined by Mr. Brougham.*

When did you draw your plan?—In 1820.

You concocted it, as I understand, from the observations of others as well as your own?—Yes.

*Colonel Leake examined by Mr. Parke.*

You have travelled in Egypt, have you not?—Yes, but many years ago.

Were you acquainted with Sheikh Ibrahim?—Not personally.

Have you corresponded with him!—No; but I have, as Secretary to a certain Society, seen his correspondence.

Are you acquainted with his hand-writing?

The Lord Chief Justice.—The witness cannot speak to that, having only seen his correspondence. If he had corresponded with him himself, the evidence would be sufficient.

Mr. Parke.—Are you acquainted with the Greek language?—Yes.

Look at page 405 of the plaintiff's book. Are the inscriptions there copied in the way that a person acquainted with Greek would have copied them?—They contain errors which I should not have expected to have been made by a person acquainted with Greek.

In the first line you will observe ατaθη τυχη; it should be αγαθη τυχη?—Yes.

There is no such word as ατaθη?—No. (105)

In the first inscription at the end of the second line, the Roman letter r is put for the Greek?—It is. (106)

That mistake occurs in two other instances?—

The Lord Chief Justice.—In inscriptions of a late date, is not the Latin

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(104) The Judge's advice was accordingly adopted; but if it had not been, no *new* fact could have been elicited, for Mr. Burckhardt's opinion and conduct, as well as the motives which led to each, have been sufficiently known and exposed before.

(105) To make this error appear in its true light, it should be mentioned, first, that the inscription itself was originally Burckhardt's, being copied from a stone at the village of Soof, and by him a copy of it given both to Mr. Bankes and Mr. Buckingham, as mentioned at the very page (405) referred to by the learned counsel. Whether the error was therefore Mr. Burckhardt's, Mr. Bankes's, or Mr. Buckingham's, is not now easy to be ascertained; but it is insignificant, be it whose it may. The inscription is in a square and rude character, in capitals, as almost all old inscriptions are; and the error consists in having a T for a Γ, which may have arisen from the hasty formation of the latter character, by extending the top stroke a little too far to the left, which would convert the Γ into a T; or it may have arisen from the error of the native Indian who copied the original notes and inscriptions fair, and, multiplied them in triplicate, to send them to England for publication; or it may, lastly, have been the error of the printer or engraver, as the work was carried through the press without any other supervision than that of the ordinary reader of the printer's establishment. The citation, however, of such an error, as placing a T for a Γ, in an old imperfect inscription, and the printing the word Piræum instead of Piræus, in a book printed 10,000 miles distant from its author, as *proofs* of the entire ignorance of that author of both the languages to which these literal errors refer, is a striking illustration of the extremes to which disappointed enemies will run, in order to disparage, if possible, their opponents. But when the reader is told that this volume on Palestine contains not less than *seventy* notes, in small print, in which not merely words, but often whole sentences of Latin and Greek are included; and when he learns that, after the severest criticism that four years of close investigation could apply, no more than these two paltry errors of the press have been pointed out, he will admit that some knowledge was likely to be possessed by the author, and great care evinced by the printer in getting it through his hands for the public eye; for there are few books, indeed, of 600 pages, that do not present a much more extended list of errata than this.

(106) The Roman R is very frequently seen in the place of the Greek P, in inscriptions in the time of the lower empire; and in those of earlier date, the Greek P had a short tail to it of about half the length of the Roman R, so that instances of both are frequent.

*r* used instead of the Greek?—I never observed it. (107)

Mr. PARKE.—You observe in the book the word Piræum is used for Piræus. Is that correct?—It is not.

*Cross-examined by Mr. Brougham.*

Do you mean to say that the Roman *r* is never used instead of the Greek?—Never in inscriptions of the time of the Roman empire. But in many old inscriptions the Greek *r* had a small addition to it which made it more resemble the Latin *r*.

How do you know that these inscriptions are of that date?

The LORD CHIEF JUSTICE.---One of them is to Marcus Aurelius---that must be in the time of the Roman empire. (108)

Do you not think that a person copying an inscription would be more likely to mistake the Greek *r* (P) for a *p*, than for the Roman *r*?—Yes; it is more like a *p* than the Roman *r*.

Did you edit Mr. Burckhardt's Travels?—Yes.

Is that the book?—(handing in a book)—It is.

Was that plan inserted in it?—(pointing to the plan of Jerash.) It was.

*Mr. Beechy examined by Mr. Parke.*

Did you know the late Mr. Burckhardt?—Yes.

Do you know his hand-writing?—Perfectly.

Do you believe those letters to be his?—(handing him some letters.) Yes.

The passages from these letters, already given in Mr. Gurney's speech, were then read by the Clerk, in order to make them evidence. (108½)

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(107) If Colonel Leake had travelled in the Asiatic colonies of Greece, and among the remains of their worst taste, as he has done in Greece Proper, and among the remains of its best days, he would have seen it often.

(108) The first Greek P in the word MAPKON, is printed correctly; the second, in ATRIAION, is printed incorrectly; but, on reference to the original copy of the inscription, from which it was engraved, the P in the last word has the small tail to it, admitted by Colonel Leake to be seen in inscriptions of earlier times, which the engraver lengthened out into the full Roman R, as it now stands.

(108½) To show what confidence could be placed in any thing which Mr. Burckhardt might say of Mr. Buckingham, the following is repeated from the 'Calcutta Journal' of Aug. 15, 1822, and the Appendix to 'Travels among the Arab Tribes,' p. 623.

"Extracts of a letter from Mr. Benjamin Babington, at Madras, to his brother, Mr. Stephen Babington, at Bombay, dated June 1818, commenting on a letter of Mr. Burckhardt, in which that gentleman had cited Mr. Babington as his authority for several gross falsehoods and calumnies regarding Mr. Buckingham:*

"I am sorry to observe, however, that all which is advanced (by Mr. Burckhardt) as well respecting my opinion of Mr. Buckingham, as on the state of our accounts, cannot but be WILFUL MISREPRESENTATIONS."

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"In the foregoing defence, I may have omitted some points that, if my memory served me, I could throw light upon. If, however, I have disproved even one unjust accusation, I shall not have taken up my pen in vain; for a single falsehood, whether uttered intentionally, or from erroneous impressions, must affect the credit of every assertion from the same source, and make an impartial judge suspend his opinion, at least, till he has heard both sides of the question."

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"I cannot close my letter without expressing my disgust at the abusive style of language used throughout the 'Paper on Buckingham,' language which, even if applicable to the object against which it was levelled, it is surely beneath the dignity of a gentleman to use. If we contrast this *abuse* with the uncommonly *kind expressions of* EXTREME REGARD uttered *at the very* time when the feelings which gave rise to the *accusations* were the *strongest*, we shall find it difficult to put much faith in Sheikh Ibrahim's (Mr. Burckhardt's) sincerity, in expressing either his regard or contempt; and this circumstance alone must weaken our confidence in the disinterestedness of his assertions.

(Signed) B. BABINGTON."

"P. S.—Since writing the above, I have learnt with much regret the death of Sheikh Ibrahim. This circumstance makes it more necessary than ever that the *truth* should be known with regard to Mr. Buckingham's character, because the Sheikh's papers may do him irreparable injury. I do not think it worth while to alter this letter. B. B."

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* The whole of this letter is given in the Appendix to Travels among the Arab Tribes, p. 660.

*Mr. Arrowsmith re-examined by Mr. Hill.*

Have you, since you have been in Court, compared Mr. Parry's plan with Mr. Buckingham's published plan, and with Mr. Bankes's original plan?—I have.

Which does Mr. Buckingham's plan most resemble?—I think that, upon the whole, it most resembles Mr. Bankes's: but, in many parts——

The LORD CHIEF JUSTICE.—Aye; he told us that before.

Mr. HILL.—No, my Lord; I believe he was going on to say, that in many parts it resembles Mr. Parry's. Is not that the case?—Yes.

Can those resemblances be the work of chance?—I think not.

Mr. GURNEY.—After we have proved the existence of variations in such numbers, can one or two accidental resemblances be of any importance? (54) This, my Lord, is the defendant's case.

## REPLY OF MR. BROUGHAM.

Mr. BROUGHAM then replied, in the following terms:—May it please your Lordship—Gentlemen of the Jury,—Considering the statement with which I troubled you this morning, and the evidence which went to support that statement, and more especially considering the sort of proof, and of comment, by which that statement, on the part of my client, has been met. I ought to apologize to his Lordship, first, for having detained you with what I am perfectly persuaded you will feel, as I do, to have been in many respects a most needless anticipation of the case of the defendant, and still more, I ought to apologize to you, for troubling you at any length with a commentary upon the case as it now stands. I went into it, simply because, from long experience in Courts of Justice, I well knew the effect, even upon the most attentive Jury,—even upon those who have bent their minds most sedulously to the case, in all its general bearings and most minute details,—of taking hold of one or two points, as my Learned Friend for the defendant has, with his usual address, done; dwelling upon those points, and illustrating them, whether they be of importance or not to the issue, and thus beguiling the attention of the Jury from that view of the case, which is really the only important one, so as to fix it upon some one issue which he raises, as it were, by the bye, and collateral to the main point in dispute between the parties, and which he seems to support with something like proof, thus getting the Jury to believe, that by that means he has succeeded; because, seeing that which he has proved, they forget how much remains, not contested at all,—not attempted to be rebutted by evidence on the part of the defendant,—and they are apt, in their forgetfulness and their inattention, to lose sight of what ought to be the great meridian line drawn through the whole map of the case, to which all the other points ought to be made to refer by their bearings, and which ought to guide them (the Jury) through the contradictory mass—the confusion, darkness, and discrepancy of the evidence, to a clear and obvious conclusion on the general merits of the case. Having, for these reasons, been led to occupy more time than was necessary, or was dictated by the smallest anxiety on my part,—I shall not increase the delay more than is obviously necessary to recal your attention to the real question between the parties.

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(109) But they were not *accidental* resemblances. This question was repeated to Mr. Arrowsmith, who declared again, that the coincidences between Mr. Buckingham's plan and Mr. Parry's, in parts where both differ from Mr. Bankes's, could *not* be accidental; but were a strong proof of the points of resemblances really existing *in* fact; and when to this is added the discovery, also made in court, that there were coincidences between Mr. Buckingham's and Mr. Burckhardt's plans, not to be found in Mr. Bankes's, the evidence of genuineness or authenticity in the former must be considered complete, whatever inaccuracies there may be; and inaccuracies there still are, no doubt, in all, which subsequent and more careful surveys can alone remove.

Observe, Gentlemen, in all these allegations, in all these contradictory statements and comments, what is the real gist of the case between the parties. It is this :—Mr. Bankes has libelled Mr. Buckingham ; he has levelled charges of a serious nature against his character ; he has defended the truth of those general, foul, and offensive aspersions, by entering into details of facts, which, as he holds, bear him out in these charges ; he does not, now at least, deny that he *published* the libel,—he never denied that he wrote it,—but he now says, by his plea, " True, it is I wrote it ; true, it is I circulated it ; true it is I gave it to Mr. Hobhouse, no friend of Mr. Buckingham, with instructions to show it to others, to persons most likely to injure Mr. Buckingham's character in the world, because persons of respectable stations and high connections :—Mr. Barker, the British Consul at Aleppo ; Mr. Rich, the East India Company's Resident at Bagdad ; Mr. Erskine, high in office in the Supreme Court of Justice at Bombay ; and Mr. Palmer, whose name is equal in credit and respectability with the names of the most opulent and respectable merchants, not only in the East, but in the world. True it is. I gave it to be seen by them, and did not put it in such a way, that it might be met publicly,—as in a newspaper, which might be proceeded against in the common way, and in which Mr. Buckingham, with equal publicity might vindicate himself,—but I published it in a private way, where it would be circulated through small channels, and where Mr. Buckingham could not meet it, unless he had the faculty attributed to some of the Eastern deities of multiplying himself into 500 persons at once.—True it is, I did all this, and true it is, that having done it, I am reponsible to Mr. Buckingham for the damages, which a British jury shall make me pay.—But it is *also* true, that he was a notoriously bad character, in Egypt, Syria, and all over the East.—That, I undertake to prove by evidence.—True it is, that he used, or surreptitiously took away my papers and published them, and having been in my employment as an amanuensis, to write from my dictation, and copy what he himself had written, availing himself of this opportunity, in breach of the trust, carried off *larcenously*, (as I said before, and nothing in the way of explanation or comment has been given to prevent me repeating the use of that word, but rather to increase the right to use it, by aggravating the charge of stealing Mr. Bankes's manuscripts, to which I originally applied it,)—all that he did,—all that breach of trust he committed,—the taking my papers was done by him,—he took these papers, and from my notes, (this is what he undertakes to prove,) he afterwards published this book of Travels, which, when he advertised it for publication, induced me to write the letter, accusing him of this fraud."

Has the defendant proved any *one* of these propositions ? These are the points between the parties. These are the matters at issue between them. The general notoriety of Mr. Buckingham's bad character, of which not a tittle of evidence has been given, though the East has been ransacked, amongst Natives and Christians, to produce witnesses ; and (keep your attention fixed on that) who could so *easily* prove it, if there was a shadow of foundation for the charge. We have the authority of Mr. Bankes, under his own hand, in this very foul libel ; it is part and parcel of the statement in the libel, that Mr. Buckingham was employed by Mr. Bankes as his amanuensis ; that he wrote under his dictation, during a part of the seven days ; and that the rest of the notes were written in Mr. Bankes's own hand, and afterwards copied fair by Mr. Buckingham. Who is in possession of these writings ? Where is that which Mr. Buckingham is said to have written under Mr. Bankes's dictation ? Who is in possession of the second notes made on the second of these stages of the journey, and which Mr. Buckingham copied over for Mr. Bankes ? That is Mr. Bankes's own statement. Who, but Mr. Bankes, is in possession of all these papers ? This story, which I have now a right to state to you as never having been proved, never having had even a colour of probability, but which, moreover, I am now entitled to assume and state to you is *disproved*

by all the evidence in this case: this story, now proved to be false, which was never credible when first stated, and is now abandoned as untrue, is a story told by Mr. Bankes; that the papers, to which Mr. Buckingham obtained access by one breach of trust, he, by another, took away to publish, and advertised for publication.

Says Mr. Gurney, "We will show you that Mr. Bankes made notes;" and he produces a small book, not two inches square. One of the arguments to prove that it was impossible for Mr. Buckingham ever to have taken notes was, that he never had a book more than *four* inches square; and Mr. Gurney produces a book of little more than *one inch square*, one quarter of the superficial contents, and one-sixteenth part of the solid contents of the book of Mr. Buckingham, which is said, in the libel by Mr. Bankes, to be so miserably, insignificantly small, that it is ridiculous to suppose that the man who kept *such* a book, could make any thing out of it at all. I admit that this is Mr. Bankes's book; I admit that he had it there; I agree with the witness who says, he *had* that small book. Here it is—proved, admitted. It is allowed to contain the deposit, the treasure, the granary of his observations on the pilgrimage to Jerash. I, at least, expected, when we went through all that parade of proof by a Christian, and a renegade Italian, who has since come back from the mosques of Mohammed to the bosom of his own church: I expected, that at any rate, this book was to have been given in evidence; and that out of it we were to have been shown the great and main body of the charge. In comparison of this, all the rest is mere dust in the balance; namely, that Mr. Buckingham had taken the information of Mr. Bankes, had got his manuscripts, had acquired his notes without his consent, and had added them to, and incorporated them in, his own publication. I was so confident of the truth of the instructions given to me by the worthy and most respectable individual who has been so foully calumniated, here and elsewhere: I was so confident of the accuracy, as well as the foresight of that gentleman in giving these instructions, that I ran the risk of calling for the evidence, and desired my Learned Friend to produce Mr. Bankes's notes, and compare them with Mr. Buckingham's publication. That publication is proved to have been from a manuscript sent home from Calcutta half a year before, at the end of 1818, and delivered up by Mr. Murray to Dr. Babington in the early part of 1820, after having had it several months in his possession. The manuscript came home at the time the advertisement bears date, 18th October 1818. Such as this book was in manuscript, such it is proved to exist in print; and this book would have been condemnatory of Mr. Buckingham, it would have convicted him, if, in producing Mr. Bankes's notes, proved to have been made by him, it had been found to agree with them in any material particular. That would, at least, have proved there was a colour of foundation for the great body of this charge; but there is not one tittle of such evidence, though the book itself is produced. Therefore, you have a right, nay more, it is your duty to assume, that the little book which contained the whole of Mr. Bankes's notes upon Jerash, contains *not one single item*, which, in any degree, tallies with the observations Mr. Buckingham has made. For no other conceivable reason could it have been withheld from you, after it had been once proved in evidence. For no other reason would my Learned Friend have left that great gap in his case, when he took such pains to travel into minor points of no importance, and even solemnly to prove, by more than one or two witnesses, that this gentleman, who went to sea at the age of nine years, was by no means a model of skill in the language of ancient Greece. Whilst he took so much pains to prove that, which, from its contemptible insignificance, might have been passed over, he never ventured to allude to one single line or letter, or portion of a letter, not even to the tail of the Greek R, contained in the inside of that little book of an inch and an half, or (we will give him the other half inch) at the utmost two inches square.

Then, Gentlemen, it is said, that not only was this a breach of trust, but that a positive condition was entered into between Mr. Bankes and Mr. Buckingham, that Mr. Buckingham was to go to Jerash, on condition that he was

not to write; I do not believe the evidence of Antonio da Costa upon that subject, any more than I do upon another, namely, of Mr. Buckingham's having pressed himself upon Mr. Bankes, and Mr. Bankes having *reluctantly permitted* him to go; because, he tells you that this conversation, which he heard, was in *English*. He has now been two years in England, and is more likely to understand the tongue accurately and easily than he did then. He admits that, at that time, neither Mr. Bankes nor Mr. Buckingham ever opened their mouths in English to him, and never to one another spoke in any other language but English; and do you think that a man, who after residing, and lodging, and exposing himself in all situations in this country for two years, does not *even now*, with the skill acquired after long practice, find himself in a situation to understand so simple a question as this, "What did Mahomet, the servant, carry?" (it was necessary that it should undergo many modifications before he could be got to understand it, and the interpreter did not much better understand it than himself,)—do you believe he should understand a conversation between Mr. Bankes and Mr. Buckingham in English, when they were so well aware he did not know the language, that they always spoke to him Italian? They were driven to Italian, as the only means of communication between them, though we know that French is the more common tongue for such purposes; and yet a reliance is to be placed upon his recollection of a conversation in English at that distant period! and without any conceivable motive, either for its attracting his attention at the time, or taking such deep root in his remembrance for ever afterwards.

He tells you another story: he says Mr. Buckingham *thrust* himself on Mr. Bankes, and Mr. Bankes was drawn over reluctantly to let him accompany him. Mr. Bankes says the very reverse. Mr. Bankes's letter, of which we now so justly complain as a grievous injury to us, does not upbraid Mr. Buckingham with forcing himself upon his company, although the writer was in that frame of mind, that he never would let slip a favourable opportunity of bringing forward such a charge. He wholly omits that topic, whilst he recurs to others totally groundless. Would he have omitted that topic, if the statement of Da Costa had been well founded? Mr. Bankes says, in his letter, "It was *at my invitation* that you went with me to Jerash." This is Mr. Bankes's own assertion; and now comes Antonio da Costa to-day, as Mr. Bankes's witness, to prove that Mr. Bankes did not invite him, but *reluctantly suffered him* to go!

Gentlemen, there are many other observations which occur on every part of the case; but I pass over them, because life is not infinite, unhappily; and strength is far from boundless on such occasions as these; besides which I have a regard for your strength and patience, as well as my own, and I feel it unnecessary to do more than lead your attention to some of the great and main features of the case. With that view I come to the *plan*, about which so much has been said. What possible ground or reason is there for suspicion that Mr. Buckingham has not been, as he represents himself to have been, and as all internal evidence shows him to have been, a second or a third time at Jerash? In the first place, had he only been there once, and had he taken the plan of Mr. Bankes, which he had an opportunity of doing, I should like to know what right Mr. Bankes had to charge him as he did in his letter? The latter plan, produced to-day, is, by their own showing, the joint work of Mr. Bankes, Mr. Parry, Captain Irby, and Captain Mangles. Captain Mangles might just as well be complained of by Mr. Parry, for pirating his plan as Mr. Buckingham by Mr. Bankes, for they were joint takers of the first plan; and, therefore, if you believe that Mr. Buckingham never was at Jerash a second time—if you believe he was only there the first time, (because he has no witness who was with him—not travelling with a train of servants,) I ask, how that bears out the statement in the letter, or the plea put upon the record, which fixes down Mr. Bankes to show that Mr. Buckingham stole his property, and that the property so stolen was unduly used for his own? He

had a right to use it, it was open to both, and if you believe that Mr. Bankes —(which these witnesses both swear—which my Learned Friend, stated in his opening) *saw* him take the copy, just as he was seen making an extract from Mr. Bankes's little book (and it must have been a *very little* extract indeed, for Da Costa says he copied *some little* out of the book, that *very very* little book, which, little as it is, is more than three-fourths even now blank paper) I pray you to say, how can it be alleged that my client obtained possession of the plan surreptitiously? The writing was done in Mr. Bankes's presence; and yet it is contended Mr. Buckingham was under a condition not to write at all! If he was *not* under a condition, there is an end of the argument; and if he *was*, the act was excepted by Mr. Bankes, who *saw* him write. They pretend he had no right to take a plan. Mr. Bankes *allowed* him to copy it. Shall I tell you why he allowed him to copy it? Because it was as much Mr. Buckingham's own making, as Mr. Bankes's. He had taken the bearings with Mr. Bankes's compasses, and therefore it is the greatest of all nonsense to say that the plan belonged to Mr. Bankes any more than to Mr. Buckingham. Mr. Bankes did one part, Mr. Buckingham another, and an equally essential part. But I say the evidence is decisive that there was a *second* plan; I say that the evidence given of the discrepancy between Mr. Buckingham's alterations, and Mr. Parry's plan fails altogether in the hands of my Learned Friend. What signifies it to me whether persons who went there in 1818 or 1819 saw matters in a different state from that in which they were four or five years before? The country they visited is subject to thunderstorms, to earthquakes, to tornadoes on land, as well as sea; but in the work of destruction the elements are helped by the hand of man; which, devouring as is the tooth of time, almost to a proverb, is still more avaricious of the works of man, and of the remains of those works. Who can presume to tell me it is anything like an argument of my not having been in a place some years *before* 1819, that I represent a tower which is not to be found there *in* 1819? or that a row of pillars more was seen in 1816, than could be found in 1819, there being only one row remaining when Mr. Parry visited the ruins in 1819, whereas Mr. Buckingham, in 1816, observed two? Have Turks or Arabs nothing to do with the destruction of a place of this kind? Are you driven to the supposition of Mr. Buckingham's visit being a fiction, because Mr. Parry finds gaps in the ruined walls, to the amount of four, whereas Mr. Buckingham has only laid down two? Are gaps in a wall not likely to be made either by time or accident, or by the hand of man? And will any man say that it is rational, that it is charitable, or that it is consistent with the most ordinary and limited measure of justice, which every one has a right to expect at the hands of others, especially if they are *sworn* to administer it, to say, that because one man saw four gaps, where another, at a previous time, saw only two, that, therefore, the other made a fictitious plan, or was never at the place at all?

Then comes Mr. Burckhardt, who is the great paragon of travellers, according to the case of my Learned Friend—who is too open, too honest, too accurate, to be deceived—too careful to be deceived himself, and far too honest to deceive others in such matters as to whether there were one or two rows and two or four gaps. Here is Mr. Burckhardt, whose editor has been examined to-day—that respectable and learned person, Colonel Leake. He is called to show how great a feature of discrepancy there is between Mr. Burckhardt's and Mr. Buckingham's plans. It turns out that the accurate, intelligent, celebrated, and much-lamented Mr. Burckhardt, agrees with Mr. Buckingham; and gives the waving line to the walls, and has no turrets. Although he, Mr. Burckhardt, saw it two or three years *before*, yet his travels were not published till two years *after* Mr. Buckingham's were sent home, published, and printed; so that Mr. Buckingham *could* not have copied from him. Is it then to be inferred that Mr. Buckingham was not there, because he has laid down a plan which differs from that made subsequently by four or five gentlemen, each occupied for four or five days together on the ground? What on

earth does this prove, except that he did not make *all* the corrections which he might have done, and all the changes that he ought to have made; but corrected it in *some* parts, and left it still erroneous in others; because he was one observer, instead of four or five; because he went there for a few hours only, without a retinue, a comparatively humble and defenceless individual; whereas Mr. Parry, Captain Maugles, Mr. Bankes, and Captain Irby, went there with a large retinue, at their leisure, were not there only for the best part of a single day, but were there for many days, during which they made repeated observations, and had professional, that is, architectural, draughtsmen, to take the drawings, and render the plan much more, infinitely more accurate than Mr. Buckingham or Mr. Bankes, without these aids, could make it? And, after all, such is the difficulty of taking these plans, and such the numberless impediments, especially on the part of travellers, to ascertain the former use of objects mouldering into decay, (one calling an object a bridge, another an aqueduct;) such is the nature of the objects, and so difficult is it to arrest the hand of time and man, that I venture to say, if, two or three years hence, three or four persons should make a party, and go to Jerash, there would be just as much difference between the plan they would make and the most correct of the present plans, as there is between that and Mr. Buckingham's. You have Mr. Arrowsmith's evidence that there are several changes made by Mr. Buckingham in his plan and bearings, which *agree* with Mr. Parry's; and it is contrary to all reason to suppose that this coincidence could be the effect of chance. That many of his alterations agree with the more correct plan afterwards taken by these four gentlemen, appears from Mr. Arrowsmith's evidence, though it hardly required such authority to establish the fact.

Let me now say a word or two as to what has been observed about book-making. Mr. Buckingham sends over some drawings to be put in his book, about twenty or thirty; but he sends over also, to be re-engraved, after trifling alterations, certain prints. These prints, which, if it were necessary, it might be shown, are very *rare* ones, are sent over, and much is attempted to be made out from the notes and instructions written on the margins of *them* But, let me ask, how did the defendant obtain these materials? In a way not very creditable to the source from which this evidence was fished up. They are sent to Mr. Murray, as a part of a private communication. They are part of a confidential correspondence between the tradesman and the author. They are entrusted to him under the sacred seal of confidence reposed by a writer in his publisher. I care not what they have disclosed; it is hardly enough to cross the even tenor of our way; because, what signifies a little book-making, even if it *had* been practised—what signifies the patching and piecing, of a plate, to save the entire making of a new drawing? But I do reprobate, and, I think, you, and every honourable mind, will join in reprobating that man who confidentially, and under the sacred seal of secrecy, being intrusted, by the author with whom he was dealing, with his private interests, has exposed those interests, by exhibiting the manuscript pencil memorandums which the author never meant the public to see, and which the man who received them, and kept them, and now promulgates them to the world, never meant the public to see, and would sooner have had his right hand cut off than *allowed* the public to see, if he had continued to be Mr. Buckingham's publisher. It was by *accident*, forsooth, that these plates were detained when Mr. Buckingham's manuscript was returned. Did Mr. Murray by *accident* also find them and hand them to the solicitor for the defendant? Was *that* by chance? Was he walking in his sleep? Did he know nothing of their nature, or of the purpose to which they were to be applied? No!—but he had been dismissed by Mr. Buckingham; and he chooses, out of spite, to furnish these documents, in breach of the trust reposed in him; in a way which I am sure no honest respectable tradesman in the city of London, Westminster, or Southwark, would have had the baseness to do. But this trick will avail them nothing; it will avail them less than nothing. What are Mr Buckingham's

directions about the plates? He says, "There is a man in such a place who ought not to be there. There is a sword, which is of the wrong shape; it is on the wrong side; it is on the right thigh, instead of the left; alter these things, alter a few of the figures, make the figures more correct than they are now; and leave the ruins exactly as they stand."

Mr. Bankes is extremely angry because Mr. Buckingham's advertisement made no mention of his name. Has Mr. Buckingham, in the book before you, as Mr. Bankes's case supposes, shown the slightest wish to conceal that Mr. Bankes was in his company? Read the preface, written before Mr. Bankes took offence, or wrote his libellous letter; which preface was published notwithstanding that letter; for Mr. Buckingham was too generous to take advantage of what had happened; but published what he had written in praise of Mr. Bankes where he deserved praise. It is a narrative of their common adventures; not suppressing, but bringing into light, and making stand forward, every single circumstance relating to Mr. Bankes, so as to give him all the praise and all the credit of his part of the adventures, as well as of the information and the drawings about which so much has been said.

It remains then, for you, Gentlemen, upon the whole of this case, only to do that which, I am sure, you have been long since ready to perform, as an imperative duty to this injured plaintiff; namely, to make Mr. Bankes pay that compensation which is so justly due to Mr. Buckingham;—due for the serious injury he has sustained; for the deep wounds inflicted on him; for the atrocious slander propagated against him (which is proved to have been told to two or three individuals, but which may have circulated over every branch of society); for what he has suffered; for what he still may suffer; for the anxiety, for the delay, and for that most grievous and unbearable load of expence with which these costly and dilatory proceedings have almost overwhelmed him.

## CHARGE OF THE JUDGE.

The Lord Chief Justice, having detailed the nature of the action, said,—As to the first plea, of not guilty of the publication, which is pleaded by the defendant, that is falsified; for, on the part of the plaintiff, it is proved that the defendant did publish the letter, respecting which this action is brought. There is then a plea of justification on the record, alleging the whole or different parts of this publication to be true. In the evidence, it appears that the defendant has failed in proving two or three, not immaterial, but very material parts of the story; and, having failed in the proof of these, it seems to me, *that he has failed altogether in his justification*, and that the plaintiff is entitled to your verdict. The question then is, what damages the plaintiff ought to receive. It appears from the evidence, that the plaintiff and defendant travelled together from Jerusalem, to visit a place called Jerash: and, I think, it may be assumed that, until they met at Jerusalem, the parties were unacquainted. The plaintiff there introduced himself to the defendant, and requested to be allowed to accompany Mr. Bankes, and was ultimately permitted to do so. (110) This journey having been thus taken, some considerable time afterwards the defendant sees an advertisement, published, as it appears, by the plaintiff, at Calcutta, announcing his intention to publish a work, to be entitled 'Travels in Palestine.' This being part of the country he had

(110) This can hardly be considered to have been proved, unless the evidence of the Portuguese servant, Antonio Da Costa, who alone asserts this, be considered more worthy of belief than the evidence of his master, Mr. Bankes, who distinctly says,—"It was at *my invitation* that you went with me to Jerash." The authority of the latter may appear to the learned Judge to be less worthy of credit than that of the former; and, if so, the inference here drawn is correct.

travelled with Mr. Bankes, and the journey having been taken under circumstances, which, it is alleged, required Mr. Buckingham to forbear to publish an account; and assuming, not incorrectly perhaps, that this work would contain some narrative of that journey, Mr. Bankes was exceedingly *irritated* to think this should take place, and he was induced, under that irritation, to write the letter of which the plaintiff complains. (111)

I think I cannot do better than read to you the libel of which the plaintiff complains—directing your attention generally to such parts as may, in the evidence, be considered as proved, or on which evidence has been offered, by the defendant, fit for consideration, and pointing out those parts of it, in which it appears he has altogether failed. The letter begins thus:

"Mr. Buckingham,—After some anecdotes respecting your conduct, which you cannot but suspect must have come, however late, to my knowledge before this time, you cannot expect that I should address you otherwise than I should the lowest of mankind. It is, indeed, with reluctance that I stoop to address you at all. It will require, however, no long preface to acquaint you with the object of this letter, since your own conscience will point it out to you, from the moment that you shall recognise a hand writing which must be familiar to you, since you have copied it, and are about to turn the transcript to account. You have hoped that the distance of place would befriend you—you have hoped that I should shrink from proclaiming that I have been imposed upon: it would have been far more politic in you to have shrunk from being proclaimed the man who has imposed.

"In that advertisement by which you announce as your own the works of another, you have at least spared me the humiliation of being named in the list of your friends. Though the motive of this is sufficiently obvious, and it furnishes in itself both a proof and an aggravation of your culpability, yet some of those who are made to appear in that list would rather, I am persuaded, that you had invaded their property, as you have mine, than have subjected them to so unmerited a stigma. One amongst the number (whom you would not have dared even to allude to had he been alive) is unhappily unable to repel the imputations in his own person—I mean the late Mr. Burckhardt, whom you so imprudently cite as your bosom friend. The boast is rash and ill-timed.

"Are you not aware that copies of a letter are extant, in which he styles you a villain—in which he says that the rogue can be brought to a sense of duty only by a kick? Do you wish, then, to publish your own disgrace, by letting the world know how well you were known to that excellent person, who, during the last two years of his life, lost no opportunity of testifying his contempt and aversion for your character."

I pause here, to state that the defendant has pleaded in justification of this part of the libel, that there does exist a copy of a letter, in which Mr. Burckhardt styles the plaintiff "a villian," and says that the plaintiff "can be brought to a sense of his duty only by a kick." Some letters, written by Mr. Burckhardt, proved to be in his hand-writing, are in evidence before you. They certainly are letters in which the writer speaks of Mr. Buckingham in unmeasured terms, disgraceful to the person thus spoken of; (112) but there is no letter, or copy of a letter, in which he styles the plaintiff "a villain," or in which he says, "he can be brought to a sense of duty only by a kick." In that justification, therefore, the defendant has failed. He has proved a letter existing, containing very considerable imputations on the plaintiff's character; but as to testifying his "contempt and aversion for his character," that also is not proved in the terms in which it is alleged in the libel. In this, also, the defendant has failed in the proof. I now go on with the letter:

"Do not imagine that these sentiments were confined to the page of a single letter. Sheik

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(111) There is a slight inaccuracy here: the letter of which the plaintiff complained was not the letter originally written by the defendant to him from Thebes; but the unsealed and open copy of this letter, sent many months afterwards from Trieste, by the hands of Mr. Hobhouse, to be published over all the East, at a time when irritation,—if even that could ever justify a series of falsehoods,—must, or at least ought to, have subsided.

(112) Rather, perhaps, "intended to degrade" the person thus spoken of; but surely not actually so disgraceful to the person spoken of, as to the person who speaks; since, what he has there uttered is neither proved, nor even averred in the defendant's pleas, to be *true*.

Ibrahim was too open and too honourable to wish others to be deceived, as he had been for a time himself. Had his letters to me reached me sooner than they did, I should have had timely warning to beware how I trusted you, and you would never have had that opportunity which you have seized of abusing my kindness and confidence.

" It is beneath me to expostulate with you; but I will state some facts to yourself, which I have already stated to others—that the journey beyond Jordan to Dgerask and Oomkais was arranged, and the Arabs under engagement to conduct me thither, before I ever saw you; that you introduced yourself to me by a letter, stating that you were intimate with some of my best friends, and studiously concealing from me (both then and afterwards) that you were in any person's employ."

The introduction by letter is proved; the contents are not proved, because the letter is torn as soon as it is read; nor does it appear to have been read by the servant. (113)

" That it was at my invitation (I being always under the supposition that you were a free agent) that you went with me, having previously agreed to take down my notes and the journals when I should wish it; that the whole expenses of that journey were upon me; that the notes and journal were in great part taken down from my mouth (especially what relates to Dgerask), with the exception of that of the two or three last days, which were written with my own hand, and afterwards copied fair by you; but, above all, that the plan of the ruins at Dgerask was constructed and noted with my own hand, and that all the assistance that I derived from you, even in collecting the materials for it, was in your ascertaining for me the relative bearings of some of the buildings with my compass; that, as to the plan of the theatre, you did not even know that I had made it till you saw it at Nazareth.

" It is hardly necessary to remind you, that you neither copied a single inscription, nor made a single sketch on the spot."

From the testimony of the witnesses for the defendant, it appears he did not, at the time, copy any inscription, or make any sketches. (114) He goes on to say,

" Since you are, I know, incapable of the one, and your ignorance of Latin and Greek must, I should suppose, unfit you for the other, add to which, you had not a single sheet of paper on which you could have done either, if I except a pocket-book about four inches square."

That the plaintiff is unacquainted with Latin and Greek was, *I think*, admitted by the Learned Counsel in the outset. (115) There is, in his book, a plate, which purports to contain some copies of Greek inscriptions, and it has been proved that, upon that plate, the character intended to denote the letter *r*, is mistaken; and, instead of finding the Greek character, you find the Latin character. I think that a person well acquainted with the Greek language was not likely to have fallen into such a mistake; (116) but the plaintiff's

(113) But the whole force of the imputation lies in the fact, whether the letter contained professions of an acquaintance with Mr. Bankes's best friends or no; so that the proof amounts to nothing more than that a servant saw a person deliver a paper to his master which he tore up (not the usual way in which letters respecting " best friends" are treated), but that neither then nor afterwards did he ever know or hear what that paper contained.

(114) These witnesses could only testify that they did not recollect to have seen these things done by the plaintiff; but to prove that he never did do them, was impossible, unless it could be shown that their eyes were always upon him; whereas, they were as frequently separated from each other as together: besides which, there was only *one* of the witnesses that went on the journey, the other remaining behind at Jerusalem.

(115) This is an inaccuracy, unintentional, no doubt. No such thing was admitted, though it was confessed that it could not be very wonderful if one who went to sea at nine years of age, should not be as accomplished a scholar as those whose whole lives were devoted to education.

(116) But it has not been at all proved that it *was* the mistake of the plaintiff. His original copies of inscriptions were for months in the hands of the late Bishop Middleton, of Calcutta, one of the most learned Greek scholars of his time, who never observed or adverted to a single error in them. These were fair copied, *in triplicate*, by native writers of India, to whom neither the English, Latin, or Greek languages were known. One of these triplicates comes to Eng-

ignorance of Greek and Latin, and any mistake which has occurred in the plate containing these inscriptions, are really matters of very small importance to this cause.

" The great ground plan was traced at a window of the convent of Nazareth (as both my servants can testify), and you have copies from my drawings at the tombs at Qoomkais, taken at the same time. These last are, probably, to furnish the vignettes and appropriate engravings which are announced."

" Surely you must laugh at the simplicity of your subscribers when you are alone, with whom you are to pass for a draughtsman, being ignorant of the very first principles of design; for an accurate copier of inscriptions, being ignorant of all the ancient languages; and, for an explainer of antiquities, being incapable of even distinguishing between the architecture of the Turks and the Romans."

This is another part in which the defendant has failed. He has taken on himself to say, that the plaintiff was incapable of distinguishing between the architecture of the Turks and the Romans, of which he has offered no proof. (117)

" I have said enough.—It is in vain to attempt to make a man sensible to ingratitude who has been guilty of fraud.

" What I demand is, the immediate restitution of those copies from my papers, without exception, and without your retaining any duplicates of them. Let them be put into the hands of Sir Evan Nepean, whom I have begged that he will do me the favour to take charge of them; and let all that portion of the work advertised that treats of a journey made at my expense, and compiled from my notes, be suppressed. I leave you, otherwise, to take the consequence: should you persist, the matter shall be notified in a manner that shall make your character as notorious in England and India, as it is already in Egypt and Syria."

Here the defendant has undertaken to prove, that the character of the plaintiff was notorious in Egypt and Syria. In that also he has failed.

" You will find that you have not duped an obscure individual, who is obliged to bear it and hold his tongue.

" Wm. J. Bankes.

" When this letter was written, I did not know that the person to whom it is addressed was editor of the paper in which his long-winded advertisement appeared, but supposed him to be still at Bombay."

I have pointed out to your attention some parts of this libel, in which the defendant has certainly not made out the proof of his justification, I have now to mention to you some other parts in which, perhaps, you may think he has; namely, that the journey was taken at the expense of the defendant, and that preparations were made for it by the defendant before he met the plaintiff. In some parts of this libel the plaintiff is accused of having copied the notes which had been taken by the defendant, or by himself under the defendant's own direction; and of having also copied the plan which had been taken by the defendant; and the defendant has called witnesses to prove, (*you* are to judge of their *credit*,) that during the journey, the plaintiff did not himself take any drawings or prospects; that on one occasion he wrote from the dictation of the plaintiff; that he was seen to make a copy of *something* contained in *some* book, and that he traced the plan that had been made. Whether the notes that are contained in this little book, are the notes from which Mr. Buckingham's book is taken, does not appear; because the contents were not read; probably they are not, and cannot be precisely the same.

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land, and the copy on that is again transferred to a plate, by an engraver. Are not these changes enough to admit such trifling errors as T for Γ, and R for P, in a large quarto volume of more than six hundred pages, and containing, at least, seventy Greek and Latin notes?

(117) Nay, more, there was strong and direct evidence from his own letter, read in court, of the full possession by the plaintiff (and, in his opinion, in a superior degree to himself), of that very knowledge, of which he here denies him any claim to the least particle!

They would, no doubt, be very concise and short. (118) Mr. Buckingham's book certainly professes to give a narrative of a journey taken in company with Mr. Bankes to Jerash; and, *if it be true*, that he took the journey under a stipulation that he was not to make writings or drawings, I think, that, as a man of delicate honour, he would have abstained from giving any narrative of the journey so taken. Whether all contained in the book is taken from the notes of Mr. Bankes is another thing. (119)

A great deal has been said, and a great deal of time consumed in examining this plan of the town of Jerash. It is said, on the part of the plaintiff, in his preface, that his plans were taken at one time, and afterwards corrected and improved at two subsequent visits. Now, the plaintiff has not been able to give evidence of any journey except that in company with Mr. Bankes: (120) and the publication, if I am correctly informed, does not contain a narrative of any other journey except that. It is argued before you, that if he had been on any other journey, you would have found a narrative of it. (121) On the other hand, on behalf of the defendant, great part of the examination of this plan was with a view to find whether or not Mr. Buckingham had made any subsequent visit, and corrected the first plan by what he saw on that subsequent visit. The evidence on that head runs into very great detail, and I do not know that I should render you any material assistance by giving you that detail again. I can only say this, that as far as the evidence goes, I should say, the matter was left in very considerable doubt or uncertainty, one way or the other. I myself could not either draw a conclusion, that the plaintiff *had* corrected the drawings from his own observations, nor could I draw a conclusion that he had not been there, and that the alterations were made merely by way of colour, and not as the result of a second visit.

The plaintiff has also offered, in evidence, his own manuscript of the printed book. When it first came over, it came accompanied by two drawings, which were not given up at the time, which Mr. Murray says he had inadvertently kept; and, by several engravings which have now been produced. The two drawings are produced, which, as they appeared in the work, are shown to be copies of some prints then in existence. (122) These drawings appear to be copied from existing prints. The prints sent over certainly are existing prints; but there is written upon each of them some directions, in pencil, for alterations: and you are desired to infer, that if these had been published, they would have been published as engravings from drawings prepared purposely, which in fact they would not have been. That would only show that this gentleman contemplated that

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(118) If there had been the least shadow of resemblance between them and the printed book, they *would* have been read, to give a colour to the charge of plagiarism. But the information said to be stolen related to Jerash; and this little book, which many persons examined in court (for all the writing in it might be read in a few minutes), did not relate to that city at all!

(119) But no *part* of it, not a word, not a letter, has been shown to be taken from this book, or from any other paper of Mr. Bankes produced in the court or elsewhere. It was incumbent on the defendant, who alone could do so, to have *shown* this; otherwise, it must be assumed that nothing in the book could be traced to Mr. Bankes's notes or papers.

(120) The notes of the journey made alone, and subsequent to Mr. Bankes, seen by Dr. Babington, at Madras, in 1818, and recognised again by him in court, were tendered, but not received. There was no other evidence that could be adduced of such a fact.

(121) The narrative not only exists, but was in Mr. Gurney's hands, in the second volume of travels,—that entitled, 'Travels among the Arab Tribes,' then in court.

(122) The two drawings adverted to by the learned judge, were two small subjects selected from 'Myers's Views in Palestine,' not sent to be engraved, or to be introduced as original drawings, but merely as wood-cut vignettes at the heads of two particular chapters, acknowledged in the preface with others of the same description. But they have not, as the learned judge supposes, "appeared in the work" at all, having been prevented by Mr. Murray's *accidental* detention of them from being placed where intended.

which many other persons have done—giving to the world, as drawings made by themselves, those which had been, in a great measure, copied from other drawings, and putting a great deal into books as being that which they had seen with their own eyes, which, in fact, they had taken from the narrative of the persons who had gone before them. That is a very common art of book-making. Whether that applies to the plaintiff's publication, I do not mean to say. (123)

I do not know any other material matter for me to direct your attention to. I have directed it to those points which appear to me to be the prominent parts of the case, and the evidence on one side and the other. I have already stated to you, that if the publication is proved, the justification is *not;* and the plaintiff is therefore entitled to your verdict. Then comes the question of damages, which is for your own consideration. You will take into your view the mode in which the original letter was written; that there was more excuse for writing it, than for the delivery of a copy a considerable time afterwards. It is due, however, to the defendant to say, that it was all done under a strong *impression* that the plaintiff was about to give to the world some account of a journey taken by the defendant, which the defendant at least *conceived* the plaintiff ought not to publish, but which he should have left to the defendant to usher to the world as his own.

Having made these remarks, you will consider the case; find your verdict; and give such reasonable and temperate damages as may appear the result of sober and correct judgment, and not the result of angry feeling.

The Jury, after deliberating for about three quarters of an hour, returned a verdict for the plaintiff.---Damages, FOUR HUNDRED POUNDS.

## Supplementary Correspondence.

In consequence of the great length to which the Trial extended, occupying the whole time of the Court, from nine o'clock in the morning till seven at night—the reports of the speeches, evidence, and charge in the Daily Papers of the following morning were, necessarily, extremely imperfect. This led to some correspondence in the Public Journals, chiefly with a view to supply the deficiencies, and correct the erroneous impressions likely to be conveyed by some particular parts of the reports in question. As these deficiencies are, however, now supplied by the full and accurate account of the day's proceedings, given in the foregoing pages, it is unnecessary to repeat any portion of the published correspondence here.* Nor would it, indeed, have been thought necessary to add a single syllable to the report itself, were it not that the attornies of Mr. Bankes thought proper to put forth, within a day or two after the Trial, clothed with all the sanction of professional authority, a letter which was calculated to convey a very erroneous as well as injurious impression; and which, probably, may have left that impression deeply fixed on the minds of thousands who have not yet seen any refutation of the allegations it contains. It was addressed to the 'Times,' the great circulation of which is well known, and is as follows:

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(123) If this had been true, it would have been deservedly a subject of just reproach; although it forms no part whatever of Mr. Bankes's charge that Mr. Buckingham copied *other* persons' materials, but that he had pilfered *his;* so that the introduction of these prints in evidence at all, *seems* unnecessary and irrelevant to the question in dispute. Still, however, though quite foreign to the charge for which the action was brought, it might, if not successfully rebutted, have helped out a weak cause, and thrown dust in the eyes of the jury, to blind them to other and more important matters; but it has failed altogether, and has only weakened instead of strengthening the case it was intended to support. They who dug a pit for others, have fallen into it themselves.

* The letters adverted to appeared in the 'Morning Post' and 'New Times,' of Oct. 23, 1826.

*To the Editor of the Times.*

Sir, Bedford-row, Oct 21.

"In your Paper of yesterday is contained an article with reference to this cause, which we must conclude obtained insertion by some inadvertence; for we are persuaded you would not admit in your columns any misrepresentation intentionally.*

"First, you say, "that after many delays on the part of the defendant, a verdict, with 400*l.* damages, was obtained by Mr. Buckingham against Mr. Bankes the younger." Now, in fact, the only delay occasioned by the defendant was in putting off the Trial from Trinity to Michaelmas Term, in the year 1824, to enable him to get witnesses from abroad. We have in our hands documents to which you may have access, if you please, to prove that all the subsequent delay was at the instance of the plaintiff, to enable him to make out his case. The Trial, at last, was by *proviso*, in other words, it was brought on at the defendant's instance.

"Secondly, you say, a similar victory was obtained by Mr. Buckingham some time ago, against the father of the present defendant. The fact is, that nominal damages of 1*s.* only were given in that case.

"With respect to the opinion you have been pleased to express, as the question between these parties is now at an end, we are not disposed to offer any remarks, either upon it, or as to Mr. Buckingham, since the public, and especially those who heard the trial, will be able to form their own judgment on his merits. But we trust that you will take the earliest opportunity of correcting the errors into which you have inadvertently, no doubt, been led. We remain, Sir, your obedient servants,

"Adlington, Gregory, and Faulkner."

The importance (or at least so it appeared to the person accused of being the *cause* of the delay) of removing the stigma—for stigma it is on any man to say, that he shrinks from trial and justice—was sufficient, in the writer's mind, to justify the immediate despatch of a letter to the paper, in which this accusatory epistle appeared, in order to confirm the accuracy of its original statements, and to show that both in their allegations, as well as in the inferences which the world were called upon to draw from them, the attornies of Mr. Bankes had followed the example of their worthy employer, in attempting to build up assertions without a proper foundation; the result of which is uniformly unsuccessful.

The letter was sent, but the reasons urged against its admission, as they originated in the most unexceptionable motives, and were expressed with corresponding courtesy and freedom, appeared quite satisfactory, and the letter was accordingly withdrawn. The note, in which these reasons were conveyed, will speak better for itself than any abstract of its contents, and, in justice to the writer of it, is given at length:

"*Times Office, Tuesday.*

"The Editor presents his compliments to Mr. Buckingham, and begs to assure him that it is from no indisposition to oblige he declines to insert the

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(*) The article or paragraph adverted to, was a few lines written by the Editor himself, in the 'Times' of the preceding day, as follows:

"It will be seen under the head of our Law Report, that after many delays on the part of the defendant, a verdict, with 400*l.* damages, was obtained by Mr. Buckingham against Mr. Bankes, the younger. Mr. Buckingham obtained a similar victory, some time ago, over the father of the present defendant. The Bankes's make but a sorry figure in this affair; and Mr. Buckingham has established, though in a painful way, his reputation as a traveller and author."

letter in answer to Mr. Bankes's attornies. But he thinks Mr. Buckingham's triumph already complete, and that any further discussion would rather weaken than strengthen the impression made on the public mind. Another reason, though not so weighty, is, that Mr. Buckingham's letter would of course lead to further correspondence, for which the editor cannot find room."

The advice here tendered was, in the same spirit, accepted and adopted; and accordingly the letter was not sent to any *other* paper for insertion, as it might, without such substantial reasons for its rejection, most probably have been. But the same objections do not apply with equal force to its introduction *here:* and as the writer of it would not have that triumph (which men of all parties now admit to be one) stained by even the slightest blemish on any portion of his conduct throughout the long course of eventful and laborious years by which it has been achieved,—he is desirous of showing that this last dying effort of a hopeless cause is as unworthy, as it must be powerless, when its true character is laid bare before the world. The hitherto unpublished letter is as follows:

"To the Editor of the Times.

"Sir, *St. John's Wood.*

"As the accuracy of your remarks on the issue of this cause, (Buckingham *versus* Bankes,) has been called in question by Messrs. Adlington, Gregory, and Faulkner, the attornies of Mr. Bankes, you will permit me I hope to show that both the assertions contained in your paper of Friday to which they object, were strictly founded in truth.

"*First,*—In reply to your observation that there were "many delays on the part of the defendant;" these gentlemen say that "the only delay occasioned by the defendant, was in putting off the trial from Trinity to Michaelmas Term, in the year 1824," and that "all the subsequent delay was at the instance of the plaintiff, to enable him to make out his case." Let the facts, however, speak for themselves. They are these: When the action was brought by me against Mr. Bankes, he pleaded, in justification, that his letter was *true* in all its parts, that he was prepared to *prove* its truth, and that on these grounds he had a *right* to publish it. He then asked leave to put off the trial till he could send out and obtain witnesses from Syria or Egypt. This was granted by the Court, on condition of his previously admitting that the letter complained of, was *really written* by him. He made this admission,—the delay was granted, and after a considerable interval, the only witnesses professed to be required by him, were brought over to this country. We were then on the point of going to trial, when it was discovered by Messrs. Vizard and Leman, (the attornies to whom I had found it necessary to transfer the case,) that though Mr. Bankes had admitted that the letter was in *his own hand-writing*, he had not admitted that he had *published* it, or, in other words, shown it to any third person. I stated to them, however, my belief, that as Mr. Bankes had not merely *written* the letter, but justified his *publication* of it, by pleading that it was *true*, and obtained the witnesses required by him to prove its truth; he would have no hesitation in *admitting* this publication, in order that we might go at once to trial on the merits of the case. I was deceived, however, in my expectation: for, on two successive applications to him to admit the publication, which was the only obstacle in the way of immediate trial, he refused to accede to this just request. My attornies, then, applied to the Court on my behalf, for leave to send a Commission to India, in order to obtain the evidence of Mr. Hobhouse who could alone prove, in a legal manner, the fact of publication, as he was the person into whose hands the libellous letter was placed for circulation by Mr. Bankes. I now learnt, with some surprise, that though the Court had unhesitatingly given Mr. Bankes leave to send for *his* witnesses to Syria or Egypt, without asking *my* consent; though I should readily have given it if required of me; they could not give me leave to send to India for the evidence

of *my* witness, without Mr. Bankes giving *his* consent, which was withheld. The Court, however, on explanation, compelled him to consent: but on a calculation which few persons unacquainted with the law, would think probable, namely, that I should pay into Court, before the Commission to India left this country, a sum of money sufficient to maintain Mr. Bankes's foreign witnesses in ease and comfort, until this Commission should return, which could not be in less than twelve months! I paid the money into Court accordingly, and the Commission went out.

"It happened, however, that soon after the Commission left this country, Mr. Hobhouse, whose testimony it was sent out to obtain, arrived in England. I immediately made an effort to get the trial brought on. But here a new difficulty arose. The original letter of Mr. Bankes had been sent out to India with the Commission, it being necessary that Mr. Hobhouse should identify it as the letter actually given to him for circulation. Still, however, as Mr. Bankes had already admitted that he had *written* the letter, of which a regularly attested copy, sworn to before a judge, was retained in this country, (which attested copy would have been received in evidence if the original had been lost:) and as the only questions to be tried were—1st, whether he had *published* the letter; and 2ndly, whether the allegations contained in it were *true*; I conceived that he would readily admit the attested copy in lieu of the original, and let us go at once to trial; since, if he had *not* published it, as his constant refusal to admit this fact would necessarily imply, Mr. Hobhouse could have settled this point, and my nonsuit would have been certain: or, supposing the publication to be proved, if the truth of the matter published could be sustained, his witnesses, Mahomet and Antonio, could have substantiated the facts, and on that ground a verdict must have been given in his favour But, though all the obstacles to an immediate trial, might have been instantly removed by the simple admission by Mr. Bankes of what he then well knew, and what has since been proved to be true, he as constantly refused: and during the last term alone was he anxious to bring on the trial, *before* the Commission had returned from India, when he would not admit an attested copy to be received in evidence, although the original letter, on which the whole proceeding rested, was on the ocean, and of course impossible to be produced in Court. The Chief Justice, however, yielded to our request of further postponement for a few weeks, to admit of the Commission returning, though we even then expressed our entire readiness to go at once to trial, if Mr. Bankes would admit either the attested copy, or the publication; and for this indulgence I was required to pay a further sum of money into Court, for the past expenses, and undertake to defray the future maintenance of Mr. Bankes's foreign witnesses till the Commission came. Thus having the satisfaction of feeding and clothing men who were to appear *against* myself, and who, during their long stay in this country, might have an agreeable, if not a very successful training, for the part so new to them to perform, when the day of trial came.

"The "many delays," therefore, which took place on this trial, were, as you justly state, "on the part of the defendant:" because, but for his refusing to admit the publication, through Mr. Hobhouse, of a letter which he contended was true in all its parts, and of which, if true, the publication would have been no crime, the action might have been brought to a close upwards of two years ago: there were two great objects, however, gained by the delay,—1st, The chances which the chapter of accidents always presents of escape from conviction, by the loss of documents, death of individuals, &c.; not to mention the abandonment, from weariness, of a pursuit that seemed endless and hopeless in its career:—and 2ndly, The certain accumulation upon my head, of expenses, which four times the damages awarded to me would not repay: for in addition to a thousand indirect disbursements, all the maintenance of Mr. Bankes's witnesses during those eighteen months past, notwithstanding that they have proved nothing against me, are to come out of my pocket, not being included in the regular costs of the action, though, as it was admitted

by one of them in Court, they have been [illegible] part of that [illegible] at least, in Mr. Bankes's own house.—Whether [illegible] portion of this sum will be claimed by the master, as remuneration for [illegible] I am [illegible]: but one who thought the expenditure of [illegible] on a journey of seven days, sufficient to [illegible] and to confer an eternal sense of gratitude, may be safely trusted to settle his own accounts, without danger of forgetting his own interests.

"*Secondly*,—Messrs. Adlington, Gregory, and Faulkner, object to your expression, that "a similar victory was obtained by me against the father of the defendant, some time ago;" and they add: "The fact is, that nominal damages of one shilling only were given in this case." It would have been wise in these gentlemen to have omitted all allusion to this matter. But, since *they* have chosen to revive it, they will, no doubt, forgive me for setting it in its true light. The action against Mr. Bankes, senior, was, it may be remembered, for having written a letter to Mr. Murray, embodying, almost in the same words, the libel of which Mr Bankes, junior, has lately been convicted; and stating that he did so on the authority of a letter received from his son, dated at Thebes, on the very day the libellous letter given to Mr. Hobhouse was written, and no doubt a verbatim copy of the same. Now, to defend this action of Mr. Bankes the elder, and to justify his conduct, all that was necessary for him to do was to call his son, Mr. William John Bankes, into Court---to place him in the witness-box---and to ask him to swear to the truth of what he himself had written. No other proof was needed; because the circumstances described were all spoken of by him as being within his own knowledge, and his oath would have been received as sufficient proof of their truth. What, however, was the conduct pursued by the father? He did not dare to call his son to swear to the truth of his own letter: and by this act alone, he tacitly declared to the world that he had no faith in his son's representations. He therefore followed the example of Mr. Murray, who had abandoned all justification of the libels in the 'Quarterly Review'; who made an apology to me in open Court, expressing his deep regret at being made the vehicle of calumny on a respectable individual; voluntarily consenting to have a verdict recorded against him for 50*l*. damages, and costs. Nay, Mr. Bankes the elder went farther still: for while Murray's 50*l*. damages only carried what are called the *taxed* costs, leaving me still something to pay, the elder Bankes's *single shilling* (fortunately for him it is not his last) was more to me than his son's 400*l*.: for the father, on condition of being let off so easily, and thus avoiding the odium and disgrace of a public trial, not only abandoned all justification or defence, but consented, with this shilling damages, to pay all the costs as between attorney and client,---that is, to repay every farthing I had myself expended in bringing him to justice: whereas the son's 400*l*. damages—like Murray's 50*l*.—carries only *taxed* costs, and will leave me on the whole about 400*l*. or 500*l*. out of pocket: a large price, it is true, but one that I shall cheerfully pay, in addition to seven years' of persevering and uninterrmitted labour and anxiety, for the defence of that reputation which is dearer to me than life.

"I am, Sir, your most obedient servant,

"J. S Buckingham."

"Oct. 23, 1826.

"P.S. It is to be hoped that the world will duly appreciate the professional care with which Messrs. Adlington, Gregory, and Faulkner, watch over the reputation of their wealthy client. When they next address the public, it would be well, perhaps, if they would condescend to do an act of justice to their own. With this view, I invite them, through the channel they have now so judiciously chosen, to explain, upon what principles of common honesty, gentlemanly candour, or professional integrity, they could consent to avail themselves of private papers, known to them to be my property, known to them to have been secretly and clandestinely withheld from me, and given up to my enemy to be used against myself. If Mr. Murray, in the bitterness of

his disappointment, could be so lost to all sense of shame as to supply my slanderer with materials for his mischief, at the very moment when he was professing to me and to the world his sorrow for his misdeeds, and his desire to repair the injuries which this very man had already made him the vehicle of inflicting on me:—if Mr. Bankes, in the desperation of his condition, could be so blinded to all future consequences to his own reputation, as to receive, and pervert to his own benefit, the pilfered property of the very person whom he was himself accusing of having pilfered his notes:—if these two enraged and defeated individuals could consent to soil their hands with such a dirty transaction:—one would have thought that respectable attornies, to whom two such individuals should have brought this secretly purloined and distinctly identified property of another man, to be used against its rightful owner, from whom all knowledge of the transaction was studiously concealed, would have not only rejected with scorn the offer of such pilfered materials, but have repelled, with dignified reproof, the insult offered to their honour by the bare tender of them for such a purpose. Of this, however, I am sure, that had any private papers or notes in Mr. Bankes's hand-writing, taken from him without his knowledge, been brought, by a treacherous servant or dishonest tradesman, to any of the legal consultations at which I had the honour to meet the counsel and attornies engaged in my cause—there is not one of them who would not have instantly shown the door to the messenger who should have dared to cross its threshhold on such a disreputable errand.—But Justice is triumphant. The low and artful cunning which prompted the measure, and the indifference to honourable feeling which consented to carry it into execution—have brought nothing but odium on the heads of those who were united in this contemptible conspiracy.

"J. S. BUCKINGHAM."

## CONCLUSION.

IT remains to be seen, whether the final issue of this long-pending case will move the EAST INDIA COMPANY to do justice to one who has suffered so deeply at their hands, as much *in consequence* of these unfounded calumnies of Mr. Bankes as from any other cause. There cannot be a doubt, in the mind of any person who was in India during the discussions that arose out of those atrocious libels, or who is acquainted with the progressive development of the events to which they gave birth, that the very first foundation laid for the odium subsequently heaped on Mr. Buckingham's head by the Indian Government and its partisans, was this slanderous letter of Mr. William Bankes; and the next aid to it, the equally slanderous article written by the hand of the same false and malicious libeller, in the pages of the 'Quarterly Review.' The first was the ground-work of all the privately circulated rumours against Mr. Buckingham's integrity; the second was the signal for open war: and when the articles written in the 'Calcutta Journal,' of August 15, 1822, appeared in refutation of the statements in the 'Quarterly Review,' the following letter, always asserted, and never yet denied, to be from the pen of the Rev. Dr. Bryce, one of the leaders of the faction opposed to the freedom of discussion in India, was published in the Indian 'John Bull,' a Paper set up and supported entirely by the principal functionaries of the Indian Government, for the avowed purpose of crushing Mr. Buckingham, and driving him from the country,—in which they, unfortunately, but too well succeeded. The letter was as follows:

"*To the Editor of John Bull.*

"SIR, "Calcutta, Nov. 1822.

"On my arrival here, about a month ago, a defence of 'Buckingham's Travels in Palestine,' against the strictures in 'The Quarterly Review,' was put into my hand. I have to beg that the Indian public will suspend their judgment on the merits of this dispute, so far as the character and conduct of Mr. Bankes are implicated, until that gentleman's reply; and I pledge myself that a scene of iniquity and falsehood will be displayed which will astonish and disgust every man of honourable feeling. You have long been duped by the most artful of adventurers; but the hour of exposure approaches. Yours, &c.

"A FRIEND OF MR. BANKES."

This letter, written by a man who subsequently avowed that he had never even *seen* the individual whom he called his friend, and who [illegible] that account, changed his signature from a Friend of, to "a Friend of Mr. Bankes," was followed up by a series of others, of the [illegible] and murderous description that, perhaps, ever appeared in print. Certainly nothing in the annals of newspaper slander in England at all resembled them. They ended in calling on all the public associations of India, and on every family or individual who had the least regard for their honour, to expel from among them, to shun, to detest, and to point the finger of scorn at the man whom this abandoned and anonymous assassin declared to be a convicted liar, robber, swindler, impostor, thief, and monster of iniquity! and all on the authority of these slanders of Mr. Bankes, now so completely exposed.* The Government of India, not content with merely looking on with complacency, at this war of extermination carried on against Mr. Buckingham, whose great crime, in their eyes, was his daring to comment freely on their measures, actually encouraged, promoted, and munificently rewarded all the parties known to them to be engaged in the composition and publication of these unparalleled libels; giving to the Rev. Dr. Bryce, especially, the place of a clerk of stationery, since declared to be altogether unsuited to his holy calling, and from which he has been since removed. Yet—will it be believed? it was for merely giving an opinion, that this appointment *was* unsuited to the dignity of the clerical profession (now since acknowledged by the highest authorities in England, to be a *right* opinion, by Dr. Bryce's twice-ordered, though twice-resisted removal from his place.) that Mr. Buckingham was banished from India; and not merely his income of 8000*l.* a year, of which he was then in receipt, as the fruit of his own labours, at once cut off; but his actual property of 40,000*l.* left behind him in the country, under the implied protection of the Government there, entirely destroyed, and he himself, by their measures subsequent to his banishment, involved in debt to the extent of 10,000*l.* more!

That all this sprung originally from the calumnies of Mr. Bankes being believed to be true, and, as such, depriving Mr. Buckingham of the sympathy and support of honourable men—no one acquainted with the facts can doubt. And what adds to the criminality of the Indian Government in acting on these slender grounds is: that the very moment of Mr. Buckingham bringing his Indian calumniators before a court of justice in that country to dare them, by a civil action, to the proof of their false aspersions, was chosen, by the head of that Government, to banish him, without a trial or a hearing, from their territories! so that his pursuit of justice was impeded, if not actually rendered impossible, by his being forcibly transported from the very court and country in which he was appealing to the laws for redress!! The issue of the Trial, however, notwithstanding the steps taken to impede it, and the banishment of the plaintiff to the distance of 10,000 miles from those who were to conduct his case, was as triumphant in India as it has been in England. The judge, Sir Francis Macnaghten, declared, from the bench, that the libels were "too atrocious to be even *thought* of without horror;" and no single proof being adduced of their truth, the libellers were *convicted* accordingly.

Though all these things have happened, however,—though the observations made by Mr. Buckingham on the improper appointment of Dr. Bryce to an office unsuited to the dignity of his profession, have since been admitted to be well founded, by the Board of Control, the Parliament, and the East India Directors, all of whom have concurred in the necessity of his removal from it without delay; and though the calumnies of Mr. Bankes, on a belief in the truth of which, all the odium into which Mr. Buckingham was plunged by his enemies in India, was founded, are proved to be as false as they were malignant; yet the victim of this injustice remains still borne down by the mass of suffering which these events inflicted on him. His fortune is entirely

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* See Appendix to 'Travels among the Arab Tribes,' in which all the proofs of this conspiracy to destroy are detailed.

destroyed; his pursuits, in the country in which all his connections were formed, are broken up; his hopes blighted; and the future, which, before these calumnies appeared, shone so brightly on his prospects, now presents only the most gloomy aspect.

'Let those who supported or justified the measures pursued towards Mr. Buckingham, in the belief that these imputations made on his character were founded in truth, only ask their own hearts what should be the course to be pursued by them, now that these imputations are shown to be utterly false? If reparation be possible, can any man doubt that it is due? and if it be due, can it either be just or honourable any longer to withhold it? We pause for a reply!

THE END.

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